IN RE CLAIM OF HARVEY M. DICKSON, WILLIAM T. MASON, THE DICKSON-MASON LUMBER COMPANY, AND D. L. BOYD, AGAINST THE UNITED STATES

EVIDENCE BEFORE SUBCOMMITTEE NO. 6, OF THE COMMITTEE ON CLAIMS, OF THE HOUSE OF REPRESENTATIVES

ON HOUSE BILL 10749

SIXTIETH CONGRESS, FIRST SESSION

FOR THE RELIEF OF H. M. DICKSON, WILLIAM T. MASON, THE DICKSON-MASON LUMBER COMPANY, AND D. L. BOYD

FEBRUARY 28 AND 29, 1908

MEMORIAL OF THE CLAIMANTS, STATEMENT RELATING TO THE HISTORY OF THE NORTH CAROLINA CHEROKEES, EVIDENCE AND AFFIDAVITS OF WITNESSES AND CLAIMANTS, WITH EXHIBITS

SUBCOMMITTEE NO. 6: MESSRS. KITCHIN, FULTON, AND MILLER

WASHINGTON
GOVERNMENT PRINTING OFFICE
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[H. R. 10749, Sixtieth Congress, first session.]

A BILL For the relief of H. M. Dickson, William T. Mason, the Dickson-Mason Lumber Company, and D. L. Boyd.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That the Secretary of the Treasury of the United States of America be, and he is hereby, directed to pay, out of any money in the Treasury not otherwise appropriated, the sum of twenty-seven thousand eight hundred and seventy-three dollars and fifty-five cents to H. M. Dickson, William T. Mason, and the Dickson-Mason Lumber Company, in satisfaction for claim against the United States for damages sustained on account of a certain injunction suit brought against said H. M. Dickson, William T. Mason, and Dickson-Mason Lumber Company, and D. L. Boyd by the United States in the United States circuit court at Asheville, North Carolina.

DICKSON-MASON LUMBER CO. ET AL. VS. THE UNITED STATES.

The three hearings in this matter were held February 28 and 29, 1908, before subcommittee No. 6 of the Committee on Claims, House of Representatives.

The Memorial.

The undersigned, citizens and residents of the State of North Carolina, respectfully petition and show unto the Congress of the United States as follows:

The Eastern band of Cherokee Indians, a remnant of the Cherokee Nation of Indians, have for many years owned and occupied and do now own and occupy large tracts of land in Jackson, Swain, Cherokee, and Graham counties, N. C., a considerable portion of which consists of wild mountain timber lands.

These Indian lands are known as the "Qualla boundary," and within the Qualla boundary there is a large tract of land belonging to the Indians, containing about 30,000 acres, and which is well known as the Cathcart tract.

In September, 1893, your petitioner D. L. Boyd bought the timber trees of certain sizes on the Cathcart tract from the Eastern band of Cherokee Indians at an agreed price, and the Eastern band of Cherokee Indians, purporting to act as a corporation of the State of North Carolina by virtue of chapter 211 of the Private Laws of 1889, attempted to make your petitioner D. L. Boyd a conveyance of said timber trees.

Your petitioner Boyd accepted said conveyance of said corporation in good faith and relying absolutely upon its validity, though he well knew at the time that it had never received the sanction of the Interior Department of the United States nor of the Indian Office nor of the President, conveyed or attempted to convey all his interest in said timber trees to his copetitioners, Harvey M. Dickson and W. T. Mason, and paid to the Eastern band of Cherokee Indians the sum in cash agreed to be paid and in all other respects proceeded to carry out in good faith his contract with said Indian band, regarding and treating them as a corporation under the laws of the State of North Carolina and individually and collectively as citizens of said State and fully competent and qualified to make contracts with respect to their property to the same extent as other citizens. Your petitioner Boyd was advised by counsel learned in the law that the individual members of this band of Indians were citizens of the State and not tribal Indians over whom the United States Government had jurisdiction and con-

trol. Acting in good faith on the like advice and belief, your petitioners Dickson and Mason bought said timber trees of petitioner Boyd and proceeded to pay large sums of money on account of the purchase price and in other respects to carry out the terms of the Boyd contract and conveyance, subject to which they had bought. Your petitioners Dickson and Mason bought said timber trees for the bona fide purpose of entering upon the lands and felling the timber trees and manufacturing same into lumber for the markets of the world. Your petitioners were advised that the United States Government held certain funds belonging to the Eastern band of Cherokee Indians and maintained a school for the benefit of the Indians at a place called Yellow Hill in the Qualla boundary; that the superintendent of said school was provided and appointed by the United States Government; and that because of this interest on the part of the Government there was some likelihood of interference on its part in case your petitioners entered upon said lands for the purpose of removing the timber above described. Not wishing to incur the displeasure of the United States Government nor to invite litigation with it, your petitioners, though advised that the members of the Eastern band of Cherokee Indians were citizens of the State of North Carolina and fully competent to make contracts with respect to their property as other citizens, made an attempt to have the Secretary of Interior approve the contract between your petitioner Boyd and the Eastern band of Cherokee Indians upon the ground that the contract was fair, free from fraud, and to the advantage of the Indians as well as to the purchasers, but this attempt was unsuccessful. Your petitioners verily believe, and allege, on information and belief, that said contract would have been approved by the Interior Department at this time had the officials thereof been fully cognizant of the facts of the case. Your petitioners believe, however, that said officials were misled in the matter by the misrepresentations of parties who were at the time interested in the matter adversely to your petitioners and who, by reason of a close relation with the Interior Department, were more influential with the officials thereof than were your petitioners or their friends.

This adverse action by the Interior Department upon the application of your petitioners for the approval of the Boyd contract raised an issue that had to be met and settled and for which your petitioners do not feel that they were in any wise responsible beyond the mere fact that they had bought, or had attempted to buy, the timber aforesaid only after being advised by counsel that the Indians could sell same. Thereupon, your petitioners, in order to bring about a speedy settlement of the issue thus raised, put a few men into the boundary of land containing the timber aforementioned and, in a modest way and with a prudent regard to the interests of all concerned so that no unnecessary damages might be inflicted or suffered by any party to the controversy, began to fell trees and to cut them into logs suitable for manufacture into lumber. Your petitioners, with the same prudent regard to the interests of all concerned, forthwith acquainted the agents of the United States Government with their acts and doings in the premises, to the end that the Government might promptly take such action as might be deemed proper to protect its own and the interests of its so-called wards, the Eastern Cherokees.

This anticipated action was some time thereafter taken by the Government and a suit instituted against your petitioners in which the Government sought an injunction perpetually restraining them from entering upon the boundary containing said timber or from in any manner interfering with or removing same from said boundary. Your petitioners were making ready to defend said suit and could have done so at that time without any great damage, because their expenditures were then small in anticipation of action on the part of the Government; but the United States district attorney for the western district of North Carolina at the next succeeding term of the United States circuit court at Asheville, N. C., acting, as your petitioners are reliably informed and believe and aver, under instructions from the Department of Justice at Washington, and particularly from the then Attorney-General of the United States, Hon. Richard Olney, came into court and voluntarily took a nonsuit in said cause. The purchase of the timber in the Cathcart tract by W. T. Mason and Harvey M. Dickson (who afterwards formed the Dickson-Mason Lumber Company for its development, and to which corporation said Mason and Dickson, in turn, subsequently conveyed their interests) was made about December 23, 1893. Practically nothing was done by them toward the development of the property until after the latter part of November, 1894, when the nonsuit hereinbefore mentioned was entered or taken by the United States Government in the said suit against these petitioners as hereinbefore described.

The action of the Government in taking a nonsuit in said cause, as above stated, led your petitioners to believe that the Government had abandoned its contention that the Eastern Band of Cherokees were tribal Indians and incompetent to make contracts with respect to their property except by authority of the United States Government. This belief became conviction when your petitioners learned of a letter dated October 22, 1894, addressed by the Attorney-General of the United States to the Secretary of the Interior, in which the Attorney-General expressed the opinion that the United States Government had no authority to interfere in any way with the Cherokee Indians of North Carolina any more than with other citizens of said State, and that it was no part of the duty of the United States to maintain the above-mentioned injunction suit against these petitioners to restrain them from entering upon and removing timber from the Cathcart boundary under the Boyd contract.

After the entry of said nonsuit and after your petitioners had learned of this opinion of the Attorney-General of the United States, your petitioners Mason, Dickson, and the Dickson-Mason Lumber Company commenced operations upon a large scale for the cutting of the timber from the Cathcart tract and for the removal and marketing of the lumber manufactured therefrom.

Said petitioners Mason, Dickson, and the Dickson-Mason Lumber Company in the course of the development of said property, built roads, tramroads, bought tram-car rails, and a large band sawmill of 20,000 feet capacity per day, and other machinery; they spent large sums of money in felling timber trees, to an amount about 1,500,000 feet of the very best quality, and in many other ways said petitioners last above mentioned spent other large sums of money in preparations to develop said timber property upon a large scale; said petitioners

all the while relying not upon the strength of their title but also upon the purpose of nonintervention on the part of the National Government not only declared in the opinion of the United States Attorney-General, but also indicated very clearly in the failure to prosecute the suit for an injunction against your petitioners and the taking of a nonsuit therein, as aforesaid.

Your petitioners Mason, Dickson, and the Dickson-Mason Lumber Company thereafter continued to make their preparations for the development of the property and in this behalf to expend large sums of money as hereinbefore and hereinafter more specifically detailed until the 8th day of March, 1895, when the United States Government served another injunction upon them of like purport and effect and based upon like grounds as the injunction first hereinbefore mentioned.

This injunction at once stopped all the operations of the Dickson-Mason Lumber Company, to which corporation Mason and Dickson had at that time conveyed all their interest and property in said Cathcart timber. The bill upon which said last injunction was issued contained allegations of fraud and unfair dealing with the Eastern band of Cherokees on the part of your petitioners, it being charged that the Indians through their ignorance and want of business knowledge were overreached in said transaction. It was also charged in said bill that the Boyd contract for said timber was "most unjust and iniquitous itself, and doubly so in respect to the ignorance of the council" (meaning Indian council) "and the influence of their advisers."

Your petitioners in due course of time fully answered the bill of the United States praying for the injunction as above set forth, and in due course the cause came on for hearing before the judge of the United States circuit court at Asheville, N. C. The answers of your petitioners denied all charges of fraud, and contended that the Indians of the Eastern band of Cherokee Indians were citizens of the State of North Carolina, and in no sense tribal Indians under the control and care of the United States Government. And thereupon your petitioners moved to dismiss the bill, for that it appeared upon its face that the controversy was one between citizens of the State of North Carolina and over which the Federal courts had no jurisdiction.

The decision of the circuit court was adverse to your petitioners upon the question of jurisdiction, Judge Simonton holding that the Cherokee Indians had never been naturalized or admitted into citizenship of the United States, although they had ceased to be tribal Indians. Says Judge Simonton in his opinion:

> But the Indians (North Carolina Cherokees) hold these lands to no such purpose. Their realty can be alienated, but the contract is reviewable by the Government for one purpose only—to protect them from fraud or wrong.

Judge Simonton in a supplemental decree said in this connection:

> But this conclusion does not dispose of the case. The United States having come into this jurisdiction and having invoked the aid of the court, stands as any other suitor, and the defendants who have been impleaded by the United States have the same rights to have their defenses examined as they would have in the case of any other suitor. The answers and defenses set up to the bill of the United States raise issues of fact important to the defendants and to the public. These facts should be investigated and their truth or falsity established.

Accordingly the judge proceeded to investigate the issue of fraud that had been raised in the pleadings through the then standing

master in equity, Hon. R. M. Douglas, now on the supreme court of North Carolina. His report in full upon this point was as follows:

REPORT OF STANDING MASTER.

In the circuit court of the United States for the western district of North Carolina, at Asheville, fourth circuit. In equity.

THE UNITED STATES OF AMERICA ET AL. *v.* D. L. BOYD ET AL., DEFENDANTS.

REPORT OF STANDING MASTER.

To the honorable the judges of the circuit court:

The undersigned, standing master in chancery, respectfully reports:

That this cause having been referred to me by a decretal order filed on the 14th day of August, 1895, I proceeded, after due notice and upon agreement of parties, to execute the said reference at Waynesville, N. C., on the 17th day of September, 1895, when and where all parties were present or represented by counsel. The agreed facts and testimony then and there taken down by me are herewith filed. From said facts and testimony I find as facts:

First. That the sum of $15,000 is and was a fair and adequate price for the timber on the Cathcart tract belonging to the Indians and described in the deed of the Eastern band of Cherokee Indians to the defendant D. L. Boyd.

Second. That there was no fraud or unfair dealing in the making of said contract between the said Indians and the said Boyd.

It appears in evidence that "By previous contract with the Eastern Band of Cherokee Indians, H. G. Ewart was to receive 20 per cent of the amount realized from the timber, and that he recovered judgment in the superior court of Henderson County, N. C., for $3,000; that Ewarts' contract was made October, 1891, and Boyd's contract with Indians September 28, 1893, and that the sum of $1,000 has been paid by the Indians out of the funds received from Mason and Dickson on the Ewart judgment." It does not appear what services, if any, were rendered by the said Ewart in consideration of receiving the 20 per cent, or that there was any other consideration for the said contract between him and the said Indians. As the said Ewart is not a party to this suit, and the validity of this claim is apparently not here called in question, I do not deem it proper to report upon its validity; but as a copy of the judgment rendered in his favor has been filed with me, I would respectfully call it to the attention of the court. Being in the nature of a "judgment quando," and not of immediate operation, it appears to be void.

Respectfully submitted this 11th day of November, 1895.

RO. M. DOUGLAS,
Standing Master in Chancery.

Upon the coming in of the foregoing report of the standing master, the same was confirmed and the injunction theretofore issued against your petitioners was dissolved and a decree entered permitting the parties to the Boyd contract to carry same out pursuant to the terms thereof. Said decree is as follows:

The United States of America, western district of North Carolina, fourth circuit. In equity.

THE UNITED STATES ET AL *v.* D. T. BOYD ET AL.

This case now comes up upon the report of the standing master in chancery, who was instructed by an order of 14th August, 1895, to "inqure into all the facts connected with the contract in issue and the circumstances under which it was made; the adequacy of the consideration thereof, the existence of any fraud or unfair dealing therein, and into any other facts pertaining to the issues involved, concerning which any party to this cause may offer testimony, and that he report the same with all convenient speed to this court." The facts as developed in the testimony, reported by the master, show that the sum of $15,000, contracted to be paid to the Indians for the timber, was a fair and adequate price for it; that there was no fraud or unfair dealing in the making of the said contract between the said Indians and Boyd, the defendant.

Hearing the testimony and the argument of counsel thereon, and upon due consideration thereof, it is ordered, adjudged, and decreed that the injunction and restraining order heretofore made in this cause be dissolved, and that the parties to the contract have leave to carry out the same pursuant to the terms thereof.

It having been stated in open court that George H. Smathers, esq., present thereat, is the custodian of funds received and to be received under the contract aforesaid from the purchasers thereunder, it is ordered that he be, and is hereby, appointed receiver in that behalf, subject to the orders of this court. That he do, within ten days from the date hereof, enter into bond, with sureties, to be approved by a commissioner of this court, in the sum of $20,000 for the faithful performance of his trust. That he invest the funds in his hands, or coming into his hands, from time to time in public securities or in first-mortgage bonds, secured by real estate otherwise unincumbered, the sum loaned not to exceed one-half the actual value of such real estate, interest at 6 per cent per annum, payable annually or semiannually. That beyond this he make no disposition of any funds in his hands, except under further order of this court.

The master having brought to the attention of the court that Hon. H. G. Ewart has a claim on these funds, leave is hereby given to the said H. G. Ewart to intervene in this suit as he may be advised.

CHARLES H. SIMONTON, *Circuit Judge.*

FEBRUARY 11, 1896.

The Government appealed from so much of this decree as held that the court had the power to permit the parties to carry out the contract according to its terms, the contention of the Government being that the contract was wholly void on the ground that these Indians were tribal Indians and embraced within the terms of the Congressional enactments for the protection of tribal Indians. This contention of the Government was sustained on appeal, the United States circuit court of appeals at Richmond holding that the North Carolina Cherokees were tribal Indians and incompetent to contract without the consent of the Government.

The opinion of the court in this case can be found in United States *v.* Boyd et al. (83 Fed. Rep., 547 et seq.).

Attention is specially called to the fact that in this case no reference is made by the court to the decision of the United States Supreme Court in the case of Eastern band of Cherokee Indians *v.* United States and Cherokee Nation (117 U. S. R., 288; 29 L. Ed., 880) where the whole subject of the North Carolina Cherokees and their status is discussed and where on page 309, the court says:

> The Cherokees in North Carolina dissolved their connection with their nation when they refused to accompany the body of it on its removal, and they have had no political organization since. Whatever union they have had among themselves has been merely a social or business one. It was formed in 1868 at the suggestion of an officer of the Indian Office, for the purpose of enabling them to transact business with the Government with greater convenience. Although its articles are drawn in the form of a constitution for a separate civil government, they have never been recognized by the United States; no treaty has been made with them; they can pass no laws; they are citizens of that State and bound by its laws.

The case from which this quotation is made was the one mainly relied upon in the circuit court of appeals by your petitioners who were contending that the North Carolina Cherokees were citizens of North Carolina and it is strange, to say the least, that the court did not even refer to it in their opinion.

An appeal from this decision of the circuit court of appeals to the United States Supreme Court was duly taken in apt time by your petitioners, but shortly thereafter the Interior Department of the United States reinvestigated the contract and the circumstances under which it was made and confirmed said contract.

There had been a change of administration and the hostile and interested influences in the Department of the Interior which, as hereinbefore set out, had accomplished the defeat of every effort by your petitioners to have the Boyd contract confirmed, were removed.

In partial proof of the facts hereinbefore set forth and in partial confirmation of the allegations of your petitioners herein, a copy of the transcript of the record on appeal in the case of "United States *v.* Boyd et al." is herewith submitted, attached hereto, and respectfully asked to be taken as part of this memorial. The other facts and allegations not supported by this record, because not covered thereby, your petitioners are ready, willing, able, and anxious to verify whenever they may be given an opportunity so to do by the Congress. Your petitioners also send herewith a brief of one of the solicitors representing your petitioners when Boyd's case was argued in the circuit court of appeals in verification and support of the allegation that the case of the Eastern Band *v.* United States et al., decided by the Supreme Court of the United States as above stated was mainly relied on by your petitioners, and the opinion of the court in the case of United States *v.* Boyd, supra, is cited to sustain the allegation that the court of appeals did not even refer to this decision of the United States Supreme Court.

By reason of the action of the United States Government in suing out and prosecuting the injunction against your petitioners, your petitioners have been greatly damaged, as hereinafter itemized and set forth, separately, and your petitioners pray the Congress of the United States to reimburse them for the damages so sustained, and respectfully ask to be allowed to introduce further evidence of the facts alleged by them, if in the opinion of the Congress further evidence thereof is necessary.

ARGUMENT.

Your petitioners respectfully contend that they are entitled to the relief herein prayed for in any aspect of the case, that is to say:

1. If the North Carolina Cherokees are citizens of that State and of the United States, as your petitioners claim, then the court which issued the injunction in the suit against your petitioners was without jurisdiction and every consideration of justice, right, and fair dealing would require a great and powerful sovereign to repair the damage done to the fullest extent. This proposition your petitioners regard as so self-evident as not to require any argument in its support.

2. But if the North Carolina Cherokees are regarded by your honorable body as tribal Indians and wards of the United States your petitioners respectfully contend that they are still entitled to the relief sought herein for the following reasons:

It is considered that the sole object of the statutes of the United States regulating intercourse between citizens of the United States and tribal Indians within the jurisdiction of the United States is to protect the Indians against fraud, oppression, undue influence, or unfair dealing on the part of those who are more intelligent and more alert to their own interests. Of course, different considerations govern the relations existing between foreigners and tribal Indians and the spirit of the laws applicable to such cases is entirely different. The spirit of the United States statutes in the case of dealings between

citizens of the United States and tribal Indians does not forbid that class of contracts which are to the advantage of the Indians and promote their well-being. Such a construction would shock the sense of justice of any guardian and, if carried to its logical conclusion, would absolutely undermine all the law controlling the relation of guardian and ward. In this last class of cases falls the Boyd contract, on account of which your petitioners have been heavily damaged.

The standing master in equity of the United States court in which the Boyd case was tried, after investigation, so found; this finding was made with the consent of the United States district attorney who prosecuted the suit for the Government and was approved by Judge Charles H. Simonton, of the United States circuit court, who tried the case below. The Interior Department of the United States, after a full and fair investigation, has so decided and has approved the contract. There is no responsible or disinterested person who impugns the transaction, and every dollar due the Eastern Cherokees under the Boyd contract has been paid to them. The great body of the Indians themselves, appreciating the advantages of the contract to them, joined with your petitioners in the ensuing litigation and fought side by side with them and against the United States Government, their so-called guardian, through the circuit court of appeals, and even joined in the appeal to the United States Supreme Court. These Indians have accepted all the advantages of the Boyd contract. It is impossible for your petitioners to be put on an equality in this respect with said Indians unless and until all damages inflicted by the action of the United States Government in the Boyd suit has been paid to your petitioners.

These damages suffered by each interest herein represented are itemized and set forth separately on two sheets hereto attached and asked to be considered as a portion of this memorial.

And your petitioners as in duty bound will ever pray, etc.

D. L. BOYD.
HARVEY M. DICKSON.
W. T. MASON.
THE DICKSON-MASON LUMBER COMPANY,
By HARVEY M. DICKSON, [SEAL]
President.

The damages of Harvey M. Dickson, W. T. Mason, and the Dickson-Mason Lumber Company mentioned in the attached memorial are itemized as follows:

Interest on purchase price $25,000 for about four and one-half years or until date of confirmation of contract by Government, less $1,200 rebate allowed by Indians	$5,738.00
Expense two trips to look after work, etc., at Soco, spring, 1894	120.00
February 23, 1895, paid D. L. Boyd making roads	200.00
Expenses of H. M. D. to Asheville and Soco from Mattoon and return	110.87
W. T. Mason's two trips to Washington, one in June and one in July, 1894	100.00
Two trips in September, 1894, from Mattoon and return	120.00
Loss of H. M. D.'s time from March 1 until the organization, January 15, 1895	1,750.00
W. T. Mason's lost time during the year 1894	833.35
Interest on railroad equipment $2,650 for nine months	119.25
Paid Indians on lease of ground	60.00
Interest on cost of improvements, timber, etc., 148,000 feet at $6, three years $888	159.84
Interest on money paid for improvements previous to the injunction, $1,500, three and one-half years	315.00

Money paid hands employed in March, April, May, and June, 1895	$121.02
Eight months feed of horse, at $10 per month	80.00
Damage to logs, 1,500 feet "approximate," on account of not being sawed	4,500.00
Loss to the company for January 15, 1895, to September 15, 1895, salaries for eight months	2,666.66
Loss of expense making first attempt at work which led to first injunction, cutting export logs	150.00
J. N. Capps's loss, actual cash paid as damages	1,491.00
Interest on Capps's loss	178.81
Expense of H. M. D.'s to Cincinnati to change mills	50.00
Interest for three years three months on $50, at 6 per cent	9.75
Attorney's fees	1,500.00
Loss on account of salaries paid, office rent, clerk hire, etc., from January 15, 1895, until date of confirmation, August, 1898	7,500.00
Total	27,873.55

CITY OF WASHINGTON,
District of Columbia, ss:

Harvey M. Dickson and W. T. Mason, being first duly sworn, say, each for himself: That he has read the foregoing memorial and knows the contents thereof; that the same is true of his own knowledge except as to the matters and things therein alleged on information and belief, and as to those matters and things he believes it to be true.

HARVEY M. DICKSON.
W. T. MASON.

Subscribed and sworn to before the undersigned, a notary public of the District of Columbia, this the 28th day of February, 1908.

[SEAL.]

E. C. OWEN,
Notary Public of the District of Columbia.

STATEMENT OF MR. LOUIS M. BOURNE, RELATING TO THE HISTORY OF THE NORTH CAROLINA CHEROKEES.

Mr. BOURNE. Prior to the treaty of New Echota between the Cherokee Nation of Indians and the United States in 1835, that nation inhabited parts of North Carolina, Georgia, Alabama, and Tennessee, and was a constant source and cause of trouble between some of these States and the United States Government. This friction made the National Government extremely anxious to secure their removal to lands west of the Mississippi River. The opportunity for doing it was afforded when the treaty of New Echota was negotiated. Accordingly, this treaty provided for the removal of the entire nation, the only exceptions made being in the cases of individual Indians who desired to separate themselves from their tribe and become citizens of the States in which they lived, as the following quotations will show. Governor William Carroll, of Nashville, Tenn., and Rev. J. F. Schermerhorn, of Utica, N. Y., were the United States commissioners appointed to negotiate the treaty of New Echota on the part of the United States. General Jackson was President and Hon. Lewis Cass Secretary of War. The fourth instruction to the commissioners, issued by the Secretary of War under the direction of the President, was in these words:

> The great object being to insure the entire removal of the tribe, no reservations will be granted. If individuals are desirous of remaining, they must purchase residences for themselves, like white persons, and must be left to the care of the laws of the States within which they reside. (S. Ex. Doc. No. 120, p. 102, 2d sess. 25th Cong.)

Commissioner Schermerhorn, acting under these instructions, Governor Carroll being absent on account of sickness, proceeded to Running Waters Council Ground, and there addressed the Indian council

in explanation of each article of the treaty. He explained the fourteenth article of the original draft (afterwards the twelfth in the draft adopted, the address being made on July 25, 1835, and the treaty ratified finally by the Cherokee people on December 29 following), as follows:

Article 14 makes provision for such Cherokees as do not wish to remove west of the Mississippi, and wish to become citizens of the States where they live, and are qualified in the opinion of the agent to take care of themselves. They will have paid to them here all that is due them for their claims, improvements, ferries, per capita allowance, removal, and subsistence; but they must buy their own lands, like other citizens, and settle where they please, subjects of the laws of the country where they live. (S. Doc. No. 120, 25th Cong., 2d sess., p. 459.)

Thus it appears that the President of the United States, the Secretary of War, and the treaty commissioners on the part of the United States all concurred in the view that no Indian should remain unless he should do so as a citizen, and this explanation was made to the Indians in no uncertain terms. The Indians were given two years within which to remove under the terms of this treaty. After its ratification by the Senate, steps were taken to insure its execution on the part of the Indians. Acting Assistant Commissary-General of Subsistence J. H. Hook, in a letter dated July 28, 1836, to B. F. Currey, esq., superintendent of Cherokee removal, uses this language:

Nine enrolling books will be prepared, in which will be entered the substance of the treaty recently formed, and a clause shall then be added signifying the choice of the signers as to the time of removing under the treaty or whether they would prefer to become citizens. The captain of the enrolling books shall provide that the enr ll-ment be a relinquishment of all right to occupancy in and to the country east of the Mississippi, and a surrender of all their rights in the same, to take effect whenever the proper agents shall signify their readiness to remove them after the period designated by themselves for removal, if prior to the latest period fixed therefor by treaty. At the expiration of which period, all who have not removed or registered, and not been admitted to citizenship, will be expected to remove.

It must be stated in this connection that, in spite of all the attempts to induce the Cherokees to comply with the portion of their treaty that required the removal of all the nation, except those who became citizens, only a very few of the Indians had removed at the expiration of the time limited therefor.

As a result, the President became impatient and determined to compel them to execute their treaty obligations, but not more so than the people of the States in which they remained.

The President therefore sent Gen. Winfield Scott, with a portion of the United States Army, to the Cherokee country to effect their removal.

General Scott issued an address to the Indians, explaining the object of his visit, in the course of which he used the following language:

Cherokees: The President of the United States has sent me, with a powerful army, to cause you, in obedience of the treaty of 1835, to join that part of your people who are already established in prosperity on the other side of the Mississippi. Unhappily, the two years which were allowed for the purpose you have suffered to pass away without following, and without making any preparation to follow, and now, or by the time that this solemn address shall reach your distant settlements, the emigration must be commenced in haste, but, I hope, without disorder. I have no power, by granting a further delay, to correct the error that you have committed. The full moon of May is already on the wane, and before another shall have passed away every Cherokee man, woman, and child in those States must be in motion to join their brethren in the Far West.

My Friend: This is no sudden determination on the part of the President, whom you and I must now obey. By the treaty the emigration was to have been completed on or before the 23d of this month, and the President has constantly kept you warned, during the two years allowed, through all his officers and agents in this country, that the treaty would be enforced.

I am come to carry out that determination. My troops already occupy many positions that you are to abandon, and thousands and thousands are approaching from every quarter to render assistance and escape alike hopeless. All those troops, regular and militia, are your friends. Receive them and confide in them as such; obey them when they tell you that you can remain no longer in this country, etc. (1 Scott's Autobiography, pp. 323-324.)

These transactions, acts, instructions, and addresses, contemporaneous with the treaty of 1835 and really part of the res gestæ of this important historical occurrence, shed a flood of light upon the twelfth article, which can not be obscured, though it may be dimmed, by the lapse of two generations since their happening.

The purpose of the United States Government to withdraw from the States mentioned all tribal Indians over whom there might be a conflict of jurisdiction had manifested itself in treaties long prior to the treaty of 1835. The policy of encouraging the Cherokees to go West distinctly appears in the promises of President Jefferson to a deputation of the tribe who waited on him in 1808, as contained in his answer to them dated January 9, 1809. Those who cared to remove West were allowed to do so, but those who chose to remain were to be unmolested and secured in their rights. The choice of going or remaining was left to the Cherokees themselves at this time. This freedom of choice was continued in the treaty of July 8, 1817. The treaty of 1819 provided, reserved, and secured certain other rights to such as chose to become citizens of the United States "in the manner stipulated in the treaty," except those enrolled at the time for the Arkansas.

It will be seen from even a casual reading of the treaties that the United States always pursued a progressive policy of acquisition of their lands and citizenation toward the Eastern Cherokees, until this policy finally culminated in the treaty of 1835, under which, it was doubtless supposed, the last excuse for a conflict of jurisdiction between the States in which the Cherokees lived and the United States on account of the presence within those States of tribal Indians, over which the United States claimed control, had been eliminated.

Hon. T. Hartley Crawford, head of the Indian Bureau at that time, in a report to the Secretary of War under date of February 22, 1844, referred to the different classes of Cherokees who had been allowed to remain east as "citizens of the State of North Carolina." As additional evidence that these Indians have considered themselves citizens and have been so regarded by the State of North Carolina, it might be mentioned that they vote, pay taxes, work the public roads, and perform all the other duties of citizens, and in partial recognition of the right of North Carolina to require the performance of these duties the United States have often made appropriations of the Cherokee funds, a large portion of which they still retain, to discharge the lien of these taxes assessed by the State or to redeem their lands when sold for taxes, all of which will appear by reference to the history of the protracted North Carolina Cherokee litigation as contained in Executive Document No. 196, House of Representatives, Forty-seventh Congress, first session, and Executive

Document No. 128, House of Representatives, Fifty-third Congress, second session.

A careful study of the Congressional Statutes between these periods fails to disclose any attempt of the United States between 1838 and 1868 to assume control of the North Carolina Cherokees or to review their contracts. The United States retained a large sum of money belonging to the North Carolina Cherokees under the treaty of New Echota hereinbefore mentioned, and the United States withheld this money until the civil war.

The possession of this fund belonging to the North Carolina Cherokees by the United States, the lapse of time, the coming on of the civil war, and the participation therein of these Indians on the side of the Confederacy as loyal citizens of North Carolina, all tended to breed confusion in the minds of those in charge at Washington as to their true status. This confusion grew until it culminated in the act of Congress of 1868, passed July 27, in which the Secretary of the Interior is directed to "cause a new roll or census to be made of the North Carolina or Eastern Cherokees, which shall be the roll upon which payments due said Indians shall be made," and to "cause the Commissioners of Indian Affairs to take the same supervisory charge of the Eastern or North Carolina Cherokees as of other tribes of Indians." (Act 40th Cong., 2d sess., ch. 259.)

It may be said of this act of Congress, whatever its purpose, that it could not make the North Carolina Cherokees a tribe of Indians if the twelfth article of the New Echota treaty made them citizens; certainly not without their consent, and probably not without consent of North Carolina.

But this act of Congress has been passed upon by the United States Supreme Court. In Eastern Band of Cherokee Indians *v.* United States and Cherokee Nation (117 U. S. S. R., 288, affirming the decision of the Court of Claims in the same case, 20 C. Cls., 449), reference is made to the effect of the statute of 1868, and in discussing the same, and the status of these Indians, the court says, on page 309:

> The Cherokees in North Carolina dissolved their connection with their nation when they refused to accompany the body of it on its removal, and they have had no political organization since. Whatever organization they have had among themselves has been merely a social or business one. It was formed in 1868, at the suggestions of an officer of the Indian Office, for the purpose of enabling them to transact business with the Government with greater convenience. Although its articles are drawn in the form of a constitution for a separate civil government, they have never been recognized as a separate nation by the United States; no treaty has been made with them; they can pass no laws; they are citizens of that State and bound by its laws. * * *

and on page 310:

> Nor is the band, organized as it now is, the successor of any organization recognized by any treaty or law of the United States. Individual Indians who refused to remove west, and preferred to remain and become citizens of the States in which they resided, were promised certain moneys, etc.

The entire history of the Cherokee Nation and of the Eastern Band of Cherokee Indians, or North Carolina Cherokees, is contained in the above-mentioned report of the case by the Court of Claims, and also in the case as reported in the United States Supreme Court Reports, supra, to both of which reports reference is hereby made for fuller particulars.

The Evidence.

PROCEEDINGS OF FIRST SESSION OF OUR COMMITTEE.

SUBCOMMITTEE NO. 6, COMMITTEE ON CLAIMS,
HOUSE OF REPRESENTATIVES,
Friday, February 28, 1908.

The subcommittee met this day at 4.45 o'clock p. m., Hon. Claude Kitchin, chairman subcommittee, in the chair.

There appeared before the committee Mr. Harvey M. Dickson, of Norfolk, Va., and Mr. W. T. Mason, of Asheville, N. C., and their legal representative, Mr. L. M. Bourne, of Asheville, N. C., in the claim of Harvey M. Dickson, W. T. Mason, and the Dickson-Mason Lumber Company.

Mr. KITCHIN. Now you may proceed.

STATEMENT OF MR. L. M. BOURNE, OF ASHEVILLE, N. C., COUNSEL OF THE DICKSON-MASON LUMBER COMPANY.

Mr. BOURNE. I want to call attention to an affidavit submitted by W. S. Hyatt, which relates to certain items of damage. He was superintendent for claimants.

The affidavit is as follows:

W. S. HYATT, being first duly sworn, says:

That he was, and is, fully acquainted with the purchase of the Cathcart boundary of timber by H. M. Dickson and W. T. Mason about the 1st of January, 1894, and of the subsequent transfer of the same by said purchasers to the Dickson-Mason Lumber Company, a corporation organized by themselves; that he began to work for the said Mason and Dickson and the Dickson-Mason Lumber Company shortly after the purchase of said lands by them, and has continued to work for them and their successors in interest ever since; that his duties were those of general manager of the cutting of the timber, the sawing of the same into lumber, and of the delivery of the lumber to the railroad for shipment; that in this way he was thoroughly acquainted with the quantity and quality of timber that was cut by Mason and Dickson and the Dickson-Mason Lumber Company after the taking of the nonsuit by the United States Government at the regular term of the Federal court in November, 1894, at Asheville, and before the institution of the new suit and the serving of the injunction on March 8, 1895; that this affiant knows that the said Dickson and Mason and the Dickson-Mason Lumber Company from the time of their purchase until the United States Government submitted to a judgment of nonsuit at the November term, 1894, were very prudent and economical in their outlays of money, because they did not wish to waste any money or to risk any considerable expenditure after the beginning of the first injunction suit by the Government until their title to said boundary of timber should be finally settled. That this affiant knows that said Dickson and Mason, and the Dickson-Mason Lumber Company regarded the voluntary action of the representatives of the Government in coming into court and submitting to a judgment of nonsuit as tantamount to a settlement of the question of title in their favor, and that they at once began the expenditure of large sums of money and the development of said property upon a huge scale, in fact, upon a scale never before attempted in the development of timber properties in western North Carolina, so far as this affiant's knowledge or information extends, felling timber trees, preparing to build tramroads, buying tram cars, engine, and steel rails, and shipping of said engine, steel rails, and other supplies to the nearest railroad station to said Cathcart tract of timber; that affiant knows that said parties entered into a contract with one J. M. Capps, who was to install a band sawmill of a daily capacity of not less than 20,000 feet of lumber; and that said Capps, in accordance with the terms of said contract, actually purchased said mill, and that said parties rented land from the Indians and built houses thereon for their tenants and workmen, and made other contracts for sawing in addition to the contract with said J. N. Capps.

That affiant knows that after said nonsuit was entered at November term, 1894, of the Federal court, at Asheville, N. C., and after these large expenditures on the part of Dickson and Mason, and the Dickson-Mason Lumber Company, to wit, on the 8th day of March, 1895, that the representatives of the United States Government renewed their action for injunction against said parties; that said injunction was actually issued in said action and served upon said parties, and that all their operations were suspended from and after said 8th day of March, 1895; that affiant further knows that by reason of said injunction most of the expenditures hereinbefore detailed were wasted and proved of no benefit or advantage to said parties, or to any of them; that the timber trees that had been felled prior to the service of said last-mentioned injunction were permitted to lie exposed to the summer sun and were greatly damaged thereby; that affiant knows that said timber trees, instead of containing 1,500,000 feet of lumber, as set forth in the memorial address to the Congress of the United States by said Dickson and Mason and the Dickson-Mason Lumber Company, afterward actually sawed out over 2,000,000 feet of lumber, all of which proved to be badly damaged; that in addition to this item of damage, affiant knows that these trees were largely poplar trees among the very best on the Cathcart tract and the most accessible; that in addition to this item of damage, affiant knows that all of the hickory, buckeye, and lynn that had been felled prior to the service of said last-mentioned injunction had to be left in the woods and proved a total loss and that all of this was due to the action of the Government in suspending the operations of said parties by the issuance and service of said injunction.

That this affiant knows that said Mason and Dickson and the Dickson-Mason Lumber Company were compelled to dispose of their railway equipment and supplies at considerable loss to themselves, and were compelled to enter into a settlement with said J. N. Capps, as set forth in the memorial addressed by them to the Congress of the United States, and that said settlement was not only reasonable, but decidedly favorable, under the circumstances, to the said Dickson and Mason and the Dickson-Mason Lumber Company.

That affiant knows further that the said parties were greatly hampered and hindered in their operations by the issuance of the said injunction and that they could not fell the timber trees upon said boundary of land, saw the same into lumber and market the same, with any regularity or continuity of operation, but were compelled to market their products most irregularly and after repeated and constant interruptions, thus entailing great loss in operation, how much it is almost impossible for this affiant, or any one else, to estimate in dollars and cents; that affiant further knows that the last period of the suspension of the lumber operations of said Mason and Dickson, and the Dickson-Mason Lumber Company continued from said March 5, 1895, to about the middle of August, 1898, and that during said period the said parties were not permitted to develop their said property or to manufacture any timber into lumber, save and except a portion of the 2,000,000 feet of timber trees, hereinbefore set forth, and that only after the same had been greatly damaged as hereinbefore set forth; and that during this period said parties were constantly engaged in litigation with the Government of the United States over the title to said boundary of timber lands.

That affiant further knows that at the end of said period the entire business of said parties was completely demoralized and disorganized, and that they had to begin over again just as if nothing had ever been done, making new contracts, organizing the business and starting in every way afresh; that affiant knows that during the suspension of the operations of the said Dickson and Mason and the Dickson-Mason Lumber Company for the causes aforesaid, that said parties maintained an office in Asheville, N. C., and had men employed on the boundary of timber as superintendents, watchers, and inspectors, all at a loss to said parties.

That affiant knows that the roads said parties had gone to great pains and expense to build were rendered absolutely worthless by nonuse and washouts and had to be almost entirely rebuilt, and affiant further knows that as a result of the litigation hereinbefore set forth, said parties could not have marketed any lumber during the period thereof save at a considerable loss to themselves, because of being hampered, interrupted, and embarrassed in their operations as aforesaid.

W. S. HYATT.

NORTH CAROLINA, *Jackson County.*

Subscribed and sworn to before the undersigned, a notary public in and for Jackson County, N. C., this the 19th day of February, 1908.

[SEAL.] W. J. MILLER, *Notary Public.*

My commission expires August 21, 1908.

Now in the next place I want to call your attention to some affidavits as to the character of these gentlemen. I file herewith affidavits of T. S. Morrison, C. J. Harris, F. R. Hewitt, J. P. Sawyer,

W. W. Rollins, postmaster; John A. Campbell, mayor; R. M. Fitzpatrick, Marcus Erwin, W. B. Williamson, C. T. Rawls, and J. E. Rankin, Governor R. B. Glenn, and Judge Fred Moore, which, respectively, are as follows:

AFFIDAVITS.

T. S. MORRISON, being first duly sworn, says that he is a resident and citizen of Buncombe County, N. C., and chairman of the executive committee of the Wachovia Loan and Trust Company, Asheville Branch; that he knows W. T. Mason and Harvey M. Dickson, and has known them for eight years past; that affiant knows that each of said parties is a man of the highest character and trustworthy in every respect, and affiant verily believes that any statement made by them, or either of them, whether under oath or not, would be entitled to the fullest credit and confidence.

T. S. MORRISON.

Subscribed and sworn to before me, a notary public, this 20th day of February, 1908.

[SEAL.] W. SCOTT RADEKER, *Notary Public.*

My commission expires November 14, 1909.

C. J. HARRIS, being first duly sworn, says that he is a resident and citizen of Jackson County, N. C., and first vice-president of the American National Bank of Asheville, N. C.; that he knows W. T. Mason and Harvey M. Dickson, and has known them for fifteen years past; that affiant knows that each of said parties is a man of the highest character and trustworthy in every respect, and affiant verily believes that any statement made by them, or either of them, whether under oath or not, would be entitled to the fullest credit and confidence.

C. J. HARRIS.

Subscribed and sworn to before me, a notary public, this 20th day of February, 1908.

[SEAL.] S. W. ENLOE, *Notary Public.*

F. R. HEWITT, being first duly sworn, says that he is a resident and citizen of Buncombe County, N. C., and vice-president of the Asheville Board of Trade; that he knows W. T. Mason and Harvey M. Dickson, and has known them for ten years past; that affiant knows that each of said parties is a man of the highest character and trustworthy in every respect, and affiant verily believes that any statement made by them, or either of them, whether under oath or not, would be entitled to the fullest credit and confidence.

F. R. HEWITT.

Subscribed and sworn to before me, a notary public, this 20th day of February, 1908.

[SEAL.] JOE W. SLUDER,
Notary Public.

My commission expires December 14, 1909.

JAMES P. SAWYER, being first duly sworn, says that he is a resident and citizen of Buncombe County, N. C., and is president of the Battery Park Bank; that he knows W. T. Mason and Harvey M. Dickson, and has known them for ten years past; that affiant knows that each of said parties is a man of the highest character and trustworthy in every respect, and affiant verily believes that any statement made by them or either of them, whether under oath or not, would be entitled to the fullest credit and confidence.

JAMES P. SAWYER.

Subscribed and sworn to before me, a notary public, this 20th day of February, 1908.

[SEAL.] J. B. ROBERTSON, *Notary Public.*

My commission expires February 3, 1910.

W. W. ROLLINS, being first duly sworn, says that he is a resident and citizen of Buncombe County, N. C., and postmaster of Asheville; that he knows W. T. Mason and Harvey M. Dickson, and has known them for ten years past; that affiant knows that each of said parties is a man of the highest character and trustworthy in every respect, and affiant verily believes that any statement made by them, or either of them, whether under oath or not, would be entitled to the fullest credit and confidence.

W. W. ROLLINS.

Subscribed and sworn to before me, a notary public, this 20th day of February, 1908.
[SEAL.] W. SCOTT RADEKER, *Notary Public.*

My commission expires November 14, 1909.

JOHN A. CAMPBELL, being first duly sworn, says that he is a resident and citizen of Buncombe County, N. C., and is mayor of Asheville, and cashier of the Citizens Trust and Savings Bank; that he knows W. T. Mason and Harvey M. Dickson, and has known them for ten years past; that affiant knows that each of said parties is a man of the highest character and trustworthy in every respect, and affiant verily believes that any statement made by them, or either of them, whether under oath or not, would be entitled to the fullest credit and confidence.

JNO. A. CAMPBELL.

Subscribed and sworn to before me, a notary public, this 20th day of February, 1908.
[SEAL.] W. SCOTT RADEKER, *Notary Public.*

My commission expires November 14, 1909.

RUFO M. FITZPATRICK, being first duly sworn, says that he is a resident and citizen of Buncombe County, N. C., and cashier of the American National Bank; that he knows W. T. Mason and Harvey M. Dickson, and has known them for five years past; that affiant knows that each of said parties is a man of the highest character and trustworthy in every respect, and affiant verily believes that any statement made by them, or either of them, whether under oath or not, would be entitled to the fullest credit and confidence.

R. M. FITZPATRICK.

Subscribed and sworn to before me, a notary public, this 20th day of February, 1908.
[SEAL.] W. SCOTT RADEKER, *Notary Public.*

My commission expires November 14, 1909.

MARCUS ERWIN, being first duly sworn, says that he is a resident and citizen of Buncombe County, N. C., and clerk of the superior court of said county; that he knows W. T. Mason and Harvey M. Dickson, and has known them for ten years past; that affiant knows that each of said parties is a man of the highest character and trustworthy in every respect, and affiant verily believes that any statement made by them, or either of them, whether under oath or not, would be entitled to the fullest credit and confidence.

MARCUS ERWIN.

Subscribed and sworn to before me, a notary public, this 20th day of February, 1908.
[SEAL.] W. SCOTT RADEKER, *Notary Public.*

My commission expires November 14, 1909.

W. B. WILLIAMSON, being first duly sworn, says that he is a resident and citizen of Buncombe County, N. C., and cashier of the Wachovia Loan and Trust Company; that he knows W. T. Mason and Harvey M. Dickson, and has known them for twelve years past; that affiant knows that each of said parties is a man of the highest character and trustworthy in every respect, and affiant verily believes that any statement made

by them, or either of them, whether under oath or not, would be entitled to the fullest credit and confidence.

W. B. WILLIAMSON.

Subscribed and sworn to before me, a notary public, this 20th day of February, 1908.

[SEAL.] W. SCOTT RADEKER, *Notary Public.*

My commission expires November 14, 1909.

C. T. RAWLS, being first duly sworn, says that he is a resident and citizen of Buncombe County, N. C., and former mayor of Asheville, N. C., and head of the firm of Aston, Rawls & Co.; that he knows W. T. Mason and Harvey M. Dickson, and has known them for twelve years past; that affiant knows that each of said parties is a man of the highest character and trustworthy in every respect, and affiant verily believes that any statement made by them, or either of them, whether under oath or not, would be entitled to the fullest credit and confidence.

C. T. RAWLS.

Subscribed and sworn to before me, a notary public, this 20th day of February, 1908.

[SEAL.] W. SCOTT RADEKER, *Notary Public.*

My commission expires November 14, 1908.

J. E. RANKIN, being first duly sworn, says that he is a resident and citizen of Buncombe County, N. C., and is cashier of the Battery Park Bank; that he knows W. T. Mason and Harvey M. Dickson, and has known them for ten years past; that affiant knows that each of said parties is a man of the highest character and trustworthy in every respect, and affiant verily believes that any statement made by them, or either of them, whether under oath or not, would be entitled to the fullest credit and confidence.

J. E. RANKIN.

Subscribed and sworn to before me, a notary public, this 14th day of February, 1908.

[SEAL.] W. SCOTT RADEKER, *Notary Public.*

My commission expires November 14, 1909.

R. B. GLENN, being first duly sworn, says that he is at present governor of the State of North Carolina; that he knows the general character of W. T. Mason and Harvey M. Dickson, and has known it for twelve years; that their general character and reputation is good, as being men of character and trustworthy in every respect, and affiant believes that any statement made by them, or either of them, would be entitled to the fullest credit and confidence both in the court-house or in a private transaction.

R. B. GLENN.

Subscribed and sworn to before me, a notary public, this 27th day of February, 1908.

[SEAL.] P. B. FLEMING, *Notary Public.*

Commission expires October, 1908.

FRED MOORE, being first duly sworn, says that he is a resident and citizen of Buncombe County, N. C., and judge of the superior court of the fifteenth judicial district; that he knows W. T. Mason and Harvey M. Dickson, and has known them for thirteen years past; that affiant knows that each of said parties is a man of high character and in his opinion trustworthy in every respect, and affiant verily believes that any statement made by them, or either of them, would be entitled to full credit and confidence.

FRED. MOORE.

Subscribed and sworn to before me, the clerk of the superior court of Gaston County, N. C., this the 27th day of February, 1908. In witness whereof I have hereunto set my hand and affixed my official seal at my office in Dallas.

[SEAL.] CHAS. C. CORNWELL,
Clerk of the Superior Court.

Mr. BOURNE. Then I have affidavits here as to Mr. Dickson's character, made by Mr. W. F. Best and Nathaniel Beaman, of Norfolk, Va., and Lewis L. Lohman, of Mattoon, Ill. The individual claimants came from Mattoon, Ill., to Asheville, N. C. The affidavits mentioned read as follows:

Mr. W. F. BEST, being first duly sworn, says that he is a resident and citizen of Norfolk, Norfolk County, Va., and is secretary of the Ferd. Brenner Lumber Company; that he knows Harvey M. Dickson, and has known him for the past five years; that affiant knows that the said Harvey M. Dickson is a man of the highest character and trustworthy in every respect, and affiant believes that any statement made by him, whether under oath or not, would be entitled to the fullest credit and confidence.

W. F. BEST.

Subscribed and sworn to before me, a notary public, this 26th day of February, 1908.

EDWARD SPALDING,
Notary Public, Norfolk City, Va.

NATHANIEL BEAMAN, being first duly sworn, says that he is a resident, a citizen, of Norfolk, Norfolk County, Va., and is president of the National Bank of Commerce; that he knows Harvey M. Dickson, and has known him for the past five years; that affiant knows that the said Harvey M. Dickson is a man of the highest character and trustworthy in every respect, and affiant believes that any statement made by him, whether under oath or not, would be entitled to the fullest credit and confidence.

NATHANIEL BEAMAN.

Sworn and subscribed to before me, a notary public, this 26th day of February, 1908.

F. A. PORTER, *Notary Public.*

My commission expires June 11, 1908.

LEWIS L. LEHMAN, being first duly sworn, says that he is a resident and citizen of Mattoon, Coles County, Ill., and is president of the First National Bank; that he knows Harvey M. Dickson and has known him for the past twenty years; that affiant knows that the said Harvey M. Dickson is a man of the highest character and is trustworthy in every respect, and affiant believes that any statement made by him, whether under oath or not, would be entitled to the fullest credit and confidence.

LEWIS L. LEHMAN.

Subscribed and sworn to before me, a notary public, this 24th day of February, 1908.

[SEAL.] W. T. OSBORNE, *Notary Public.*

STATEMENT BY MR. BOURNE BEFORE THE COMMITTEE ON CLAIMS FOR CLAIMANTS.

Mr. BOURNE. I desire to submit a statement in which the facts connected with this claim are set out in chronological order, so that you gentlemen will have no trouble in following or undertsanding them.

Mr. Bourne then dictated the following statement:

"In the matter of the claim of Dickson, Mason, and the Dickson-Mason Lumber Company for damages against the United States Government:

"D. L. Boyd bought the timber trees above certain sizes on the Cathcart tract of land in the Qualla boundary from the Eastern band of Cherokee Indians in September, 1893. The Indians conveyed as a corporation, having been incorporated by chapter 211 of the private laws of North Carolina of 1889, after a decision of the United States Supreme Court declaring them citizens of North Carolina in 1886."

Mr. FULTON. It seems to me that we know generally, Mr. Kitchin and I, the nature of the claim, and now if you will get into shape a full and complete statement, I think it would be serviceable. I would suggest that it all ought to be in one paper, in one statement, setting out the history of the Indians, following up with your transactions step by step, and then all we will have to do is to read that to the committee, and then we will take the evidence here as to the damages. Leave out the argument entirely in regard to these Indians.

Mr. BOURNE. As to their citizenship?

Mr. FULTON. Yes; and state exactly the facts. If you want to file a brief in addition, you can do that.

Mr. KITCHIN. The memorial sets out all the facts?

Mr. BOURNE. Yes.

Mr. KITCHIN. If there is anything in your statement that is not included in the memorial, attach that to the memorial.

Mr. FULTON. Our time is so limited to-night that I do not think you should take up time in dictating the statement.

Mr. KITCHIN. In the memorial you can put in any additional facts that may occur to you that would throw light on the case in addition to the facts there set out.

Mr. BOURNE. My statement will give the exact dates. That is the only difference between that and the memorial. You see, I collated certain facts in this matter not to submit to the committee, but really as a basis of my statement to you. I expected as we went along that you would ask questions if anything was not clear.

Mr. FULTON. Very well.

Mr. BOURNE (resuming his dictation):

"D. L. Boyd bought the timber trees, as before mentioned, on the Cathcart tract of land in the Qualla boundary from the Eastern Band of Cherokee Indians in September, 1893. The Indians conveyed as a corporation, having been incorporated by Chapter 211 of the private laws of North Carolina of 1889, after a decision of the United States Supreme Court, declaring them citizens of North Carolina in 1886."

Mr. BOURNE. The Indians conveyed as a corporation, having been incorporated by chapter 211 of the private laws of North Carolina of 1889, after a decision of the United States Supreme Court in the case entitled "The Eastern Band of Cherokee Indians against The United States and the Cherokee Nation" (117 U. S., 288), in which decision they were declared citizens of North Carolina, said decision being rendered in 1886. Dickson and Mason bought from Boyd in January, 1894, paying for said timber trees $25,000.

Mr. FULTON. What was the general nature of that suit? What point was involved in that suit?

Mr. BOURNE. The Eastern band, the Government, and Cherokee Nation sued for part of the national funds, alleging that it had never gotten its proportion of the funds belonging to the Cherokee Nation, when the individuals belonging to the Eastern band separated themselves from the nation after the treaty of New Echota in 1835.

Mr. FULTON. Was the question of citizenship of the State directly involved?

Mr. BOURNE. I think it was. That is my construction of the case. It was necessary to the decision of the case. The case originated in the Court of Claims, and that court decided this very question.

Mr. FULTON. In that case there was not any question as to their power to acquire and dispose of property?

Mr. BOURNE. No, except as an incident of citizenship. The question was directly involved whether they were tribal Indians and members of the Cherokee Nation.

Mr. FULTON. And the courts held that they were not?

Mr. BOURNE. That they were not tribal Indians. The Dickson-Mason Lumber Company was organized in January, 1895. It was composed of H. M. Dickson, W. T. Mason, and one or two nominal incorporators, and this property was conveyed to the company——

Mr. FULTON. Does that paper state the name under which these Indians were incorporated? What was the name they went by?

Mr. BOURNE. The Eastern Band of Cherokee Indians.

Mr. FULTON. That was their corporate name?

Mr. BOURNE. Yes, sir.

This property was conveyed to the Dickson-Mason company for the purposes of development in January, 1895. In this connection I had better state that the lands upon which these timber trees were located were wild mountain lands, from 10 to 22 miles from the railroad, and these gentlemen—Dickson and Mason—knew when they purchased them that it would require the expenditure of large sums of money in order to make the timber proposition commercially valuable. The property was not only a great distance from the railroad, but it was in a very rough and difficult country. There was very little capital in western North Carolina at the time, and in the opinion of a great many experts this timber proposition was not a commercial proposition at that time.

Mr. KITCHIN. Were these men among the first timber men that went into that section for the manufacture of timber?

Mr. BOURNE. They were the first men who ever went in there to develop timber interests on a large scale, so far as I know.

Mr. FULTON. What kind of timber was that?

Mr. DICKSON (interrupting). Hardwood—ash, oak, and so on. A great deal of the timber had been cut close to the lines of the railroad, within 2 and 3 and 4 miles back, but nobody had gone back into that section such a distance as this was, over such a rough country. There had been several river propositions, where the timber adjacent to flowing streams had been taken up away from the railroad, but there was no such proposition here. The nearest mill site we could get on the property was 9½ or 10 miles. We called it 10 miles, and that lumber there had to be railroaded out of there or wagoned out.

Mr. KITCHIN. What county is that?

Mr. DICKSON. In Swain County, and a little in Jackson County.

Mr. FULTON. We will likely get to that on the question of damages?

Mr. BOURNE. Yes.

It was feared by the purchasers, because they had been so advised, that the Government might claim some right of control over these lands, or over the Indians, and might interfere with the purchasers' operations, though the latter were, also, advised that the Government had no legal rights in the premises. Accordingly Boyd was put to work to induce the Government to assert any authority it might claim in order to have the matter settled, though no expenditure amounting to anything was made at this time, for obvious reasons.

This action was also taken on account of repeated demands of the Indians that work begin. They expected to do part of the work, and they actually received a good deal of employment later.

Boyd's work produced the desired result, and an injunction was served upon the purchasers early in the fall of 1894.

Mr. FULTON. What was the title of that action?

Mr. BOURNE. That action was entitled "The United States of America against D. L. Boyd, Harvey M. Dickson, W. T. Mason, and the Dickson-Mason Lumber Company"—no, the company had not been organized yet—"and the Eastern Band of Cherokee Indians." Now, it is possible that one or two Indians who dissented from the contract joined with the Government, and an invitation to participate as plaintiffs in that suit was extended to others of the Indians to come in and make themselves parties plaintiff; but none of them came.

Mr. FULTON. When was that action brought?

Mr. BOURNE. It was brought in the United States circuit court at Asheville, N. C., or really, I believe, it originated at Greensboro. It was in the United States circuit court for the western district of North Carolina. Boyd's work produced the desired result, and an injunction was served upon the purchasers early in the fall of 1894. Work was then suspended until the matter could be judicially determined.

The defendants in the case were the claimants here and the Eastern Band of Cherokee Indians, as a corporation or community. The great body of the Indians throughout the entire controversy fought side by side with the purchasers and sought to sustain the Boyd contract.

Mr. KITCHIN. In that suit what did the Government allege as grounds for the action?

Mr. BOURNE. They alleged that these Indians, according to my recollection—the two suits were practically identical—that these Indians were tribal Indians, subject to the control and guardianship of the United States Government, and that a fraud had been committed upon them, and they had been overreached in this trade.

Mr. FULTON. And they based the real rights, however, to maintain the action on the ground that the Indians were not capable of entering into a contract?

Mr. BOURNE. That subsequently became their main ground. At first it was the allegation of fraud that they seemed mainly to rely on.

Mr. FULTON. That was the right that the Government had to step in to prevent fraud?

Mr. BOURNE. Yes.

The conduct of the suit was evidently committed to the Department of Justice, which took the matter up and considered the same, with the result that on the 22d day of October, 1894, Hon. Richard Olney, then Attorney-General of the United States, wrote a letter to the Secretary of the Interior——

Mr. KITCHIN. Will you file a copy of this letter?

Mr. BOURNE. I have it right here.

Mr. KITCHIN. Say "a copy of which I herewith file with my statement."

Mr. FULTON. Give it to the stenographer, and he can attach it and mark it "Exhibit A."

Mr. BOURNE. Yes. He wrote a letter to the Secretary of the Interior upon the subject of the status of the Eastern Band of Cherokee Indians and their right to make contracts, a copy of which letter is marked "Exhibit A" and herewith submitted as a part of this statement.

EXHIBIT A.

DEPARTMENT OF JUSTICE,
Washington, D. C., October 22, 1894.

The SECRETARY OF THE INTERIOR.

SIR: In compromising the litigation concerning the lands of the Eastern Band of Cherokees in North Carolina, I have caused a decree to be entered, a copy of which is inclosed, together with a copy of a report of the master in chancery in regard to it. This decree concerns lands within what is called the "Qualla boundary."

Other lands lie without that boundary, and to these a deed was made by one Johnson to the Commissioner of Indian Affairs and his successors forever for the use and benefit of the Eastern Band of Cherokees. The full text of this deed is given in Executive Document 128, Fifty-third Congress, second session.

It is deemed advisable, notwithstanding our opinion that the Commissioner of Indian Affairs has taken no title under that deed as well on account of the nature of the proposed grantee as by reason of the attempt to pass an unalienable title contraty to the policy of the law of North Carolina, that the present Commissioner should remove the cloud upon the title of the Indians by making a conveyance to the heirs of Johnston, who stands ready to convey to the corporation known as the Eastern Band of Cherokee Indians. (Private Laws of North Carolina, 1889, ch. 211.) It is also proposed to make the Commissioner a party to the litigation, and cause his deed to be ordered and confirmed by the court. In considering the compromise it has appeared to me that the legal status of the Indians in question is that of citizens of North Carolina; that they have been in all respects citizens since the date of or soon after the treaty with the Cherokees of 1835, and this with the consent of the United States expressed in that treaty, by the election of the Indians and the consent of North Carolina. They have voted at all elections for half a century, and are citizens of the United States. It seems clear that Congress could not, by the act of July 27, 1868, or otherwise (if such was the intention) make of them an Indian tribe or place them under the control of the United States as Indians any more effectually than if they had been white citizens of Massachusetts or Georgia. (Eastern Band of Cherokee Indians *v.* The United States and Cherokee Nation, 117 U. S., 288). Neither could such citizens of North Carolina make themselves a tribe of Indians within that State.

Accordingly the suit, which was recently instituted by this Department at the request of yours against D. L. Boyd and others on account of timber trespass alleged to have been committed by them in pursuance of a contract not approved by the Commissioner of Indian Affairs, seems to be one which it is no part of the duty of the United States to maintain. If these views meet with your approval, I shall direct the dismissal of that suit, and also withdraw the direction given to the United States attorney for the district to enter his appearance in defense of another suit brought against one H. G. Ewart for fees claimed for executing a contract with the said Boyd, which appearance was likewise at the instance of your Department. If, however, my views do not meet your approval, I shall be pleased to hear any suggestions you may desire to offer.

I inclose a copy of a letter from the United States attorney for the district, dated the 10th instant, in which you will find mention of the suit against Boyd and others.

I am very desirous of closing at once this business of the compromise, and should therefore be pleased to have an answer at your earliest convenience.

Respectfully,

R. OLNEY, *Attorney-General.*

In that letter he held that the Government had nothing to do with the Indians. In that letter, as will appear therefrom, the Attorney-General held and advised the Department of the Interior that these Indians were citizens of the State of North Carolina and had the right to make contracts just as other citizens of a State.

Mr. KITCHIN. And the Government ought not to maintain the suit?

Mr. BOURNE. Yes, and that the suit should be dismissed. That is the language that he used.

Mr. KITCHIN. What became of that suit?

Mr. BOURNE. That is what I am going to take up now.

Following this letter, at the next regular term of the Federal court at Ashville, N. C., in November, 1894, the Government came into court and took a nonsuit in said case. A copy of the letter of the Attorney-General above referred to was filed among the records of said case, and claimants and their attorneys became aware of its contents. They thought, and I respectfully submit that they had a right to think, in view of this letter and of the action of the Government in taking the nonsuit, that the Government would no longer claim any right to interfere in so far as the Boyd contract affected the Indians and their property. This was generally understood by all the interested parties at the time. Accordingly the purchasers immediately began to make the large expenditures necessary for the proper development of their property——

Mr. DICKSON. Immediately the purchasers moved to the State of North Carolina. You see, we had incurred practically no expense prior to that time, and had lived in Illinois.

Mr. BOURNE. Well, immediately the purchasers moved from Mattoon, Ill., their then place of residence, to Asheville, N. C., and began to make the large expenditures necessary for the proper development of this property, and in addition to the $25,000 purchase price they probably expended in cash as much as $25,000 more, besides making contracts which called for the expenditure of large sums later. In fact, the private fortunes of both the individual claimants were practically involved in this purchase and development.

It turned out later that the Department of the Interior was not satisfied with the position of the Department of Justice on the subject of the status of the North Carolina Cherokees, and had the Department of Justice, in March, 1895, to institute another injunction suit, alleging that the Indians had been led into making the Boyd contract by fraud and had been overreached in the transaction. The allegations of this bill were practically the same as those of the first bill.

Mr. FULTON. What attorney brought this second action for the Government?

Mr. BOURNE. The United States attorney for the western district of North Carolina, Hon. R. B. Glenn, who is now the governor of the State.

Mr. FULTON. The same one that brought the first action?

Mr. BOURNE. Yes, sir. This matter came on for hearing upon bill and answer, the defendants denying the fraud or undue influence, and Judge Charles H. Simonton, United States circuit judge, rendered the opinion set out in the case of "The United States against Boyd" (68 Fed. Rep., 577), in substance holding that the Eastern Band of Cherokees were tribal Indians and wards of the Government, and that the Government of the United States, like any other guardian, had the right to interfere in that transaction but for one purpose only, to protect said wards from fraud and to see that any contract made by them was for their benefit and not to their detriment. Accordingly he referred the matters of controversy upon the bill and answer to the standing master, Hon. R. M. Douglas, of Greensboro, N. C., who afterwards served eight years on the supreme bench of

North Carolina. Judge Douglas reported that the transaction was free from fraud or undue influence and that the trade was to the advantage of the Indians.

Mr. KITCHIN. His report is set out in the memorial?

Mr. BOURNE. Yes.

Mr. KITCHIN. It will be filed with the committee.

Mr. BOURNE. This report was made by the direction of the then United States district attorney for the western district of North Carolina, Hon. R. B. Glenn. This report was also made on the testimony of the Government's witnesses and without the introduction of any testimony on behalf of the defendants.

Upon the coming in of the master's report it was confirmed and the trade with the Indians was ordered ratified by the court, the court holding that it had the power to ratify said contract. This decision is reported under the title of "The United States *v.* Boyd" (68 Fed. Rep., 577), both Judge Simonton and Judge Dick delivering opinions.

Mr. FULTON. To the same effect were the opinions?

Mr. BOURNE. Yes. They agreed. The Government was dissatisfied with this decision and appealed to the circuit court of appeals for the fourth circuit. In November, 1897, this court decided that these Indians were tribal Indians and the Boyd contract absolutely void, the opinion therein being delivered by Judge Goff.

Mr. KITCHIN. What report is that in?

Mr. BOURNE. I will give it to you in a minute. This case is reported under the title of "United States *v.* Boyd" (27 C. C. A., 592; 83 Fed. Rep., 547). After this decision the claimants and the Eastern band of Cherokee Indians appealed to the United States Supreme Court. Pending that appeal the Interior Department itself confirmed the Boyd contract in the latter part of August, 1898, and, so far as the claimants were concerned, there was nothing to be decided by the United States Supreme Court, and the appeal was not further prosecuted.

It may be remarked in passing that Judge Goff in his decision never referred to the case of The Eastern Band of Cherokees against The United States and The Cherokee Nation, reported in the Twentieth Court of Claims Report, page 449, nor to the same case in 117 United States, 288, where the decision of the Court of Claims was affirmed and the whole matter of the status of these Cherokees is discussed.

As to the present view of the Department of the Interior, based upon all of the decisions herein mentioned, see the report of the Commissioner of Indian Affairs to the Secretary of the Interior for the fiscal year ending June 30, 1903, from pages 97 to 103. I would just like to call your attention to his conclusions, after reviewing these decisions. It is very short [reads]:

> The general assembly of the State of North Carolina in 1889 (private laws, chap. 211), passed an act incorporating the Eastern band of Cherokee Indians in North Carolina, and the said band is now a corporation duly organized under the laws of that State, with power to sue and be sued. Being governed by the above decisions and legislation, this Office in its administrative capacity holds that this band of Cherokee Indians, holding their lands in fee, can alienate the same, but the contract is reviewable by the Government for one purpose only, to protect them from fraud or wrong, and that having been incorporated as a body politic, with the power of suing and being sued, the acts of this band are reviewable only to protect them from fraud or wrong.

It was in 1903 that this report was written.

Mr. FULTON. You say the Interior Department stepped in and voluntarily affirmed that contract?

Mr. BOURNE. Yes, sir.

Mr. FULTON. When was that?

Mr. BOURNE. That was in August. We received notice of it in August, 1898.

Mr. FULTON. What did the Department do?

Mr. BOURNE. Mr. Smathers, you see, was representing the Eastern band of Cherokee Indians, and they wanted the contract confirmed, and we had already filed an application to have it confirmed before the first suit. We did not want a suit. We had made application to have it confirmed, so as to remove any trouble.

Mr. FULTON. They made application before the first suit?

Mr. BOURNE. Yes.

Mr. FULTON. What action was then taken by the Department?

Mr. BOURNE. It was turned down. Mr. Crawford was in Congress at the time and he was acting for Boyd, not for Mason and Dickson. That was before these latter gentlemen had anything to do with it. When we were discussing the question of title and the right of the Indians to convey, Boyd was assuring the prospective purchasers that even if the Government could interfere there would be no trouble; that he expected a telegram at any moment that the contract had been confirmed. Mr. Smathers, who represented the Indians, was also working for confirmation all the time.

Mr. KITCHIN. But in the meantime the Department of Justice stepped in and the Attorney-General rendered his opinion?

Mr. BOURNE. Yes; before Mason and Dickson did a thing in the way of expending money or making contracts.

Mr. FULTON. You say the Interior Department at first refused to confirm or ratify the agreement?

Mr. BOURNE. Yes. It declined to do it.

Mr. FULTON. Did they give any reason why?

Mr. BOURNE. I do not remember.

Mr. MASON. A party by the name of W. C. Smith, of south Georgia, had made a previous contract almost in the exact terms with the contract that Boyd made afterwards, after it had expired; but he was up here in the Department trying to get his contract confirmed.

Mr. BOURNE. His contract had already expired.

Mr. MASON. Before the Indians made the contract with Boyd, Smith's contract had expired, and they made a contract with Boyd. Those two contracts came up here for confirmation.

Mr. BOURNE. The Indians did not go back on the prior contract.

Mr. MASON. No, but his time had expired, and they made a new contract with Boyd.

Mr. BOURNE. I had forgotten about Smith's connection with it.

Mr. DICKSON. The Commissioner of Indian Affairs in a letter—we may have it in the files somewhere—said he would not confirm either contract, but that if he confirmed either one, it would be the Smith contract, because of its priority.

Mr. KITCHIN. After they refused to confirm the contract—that is, the Interior Department—did the Attorney-General render this opinion, after the first suit was brought to test it?

Mr. BOURNE. Yes.

Mr. DICKSON. Yes.

Mr. BOURNE. With the result detailed in the statement I have made.

Now, I think it very clear that we should be allowed all such damages as claimants, sustained by reason of the first injunction suit, because the Government voluntarily allowed judgment to go against it in that case. In other words, it lost the case and should be chargeable with the damages accruing therein, like an individual.

PROCEEDINGS OF SECOND SESSION OF SUBCOMMITTEE.

COMMITTEE ON CLAIMS,
Saturday, February 29, 1908.

The subcommittee met this day at 10.30 o'clock a. m., Hon. Claude Kitchin, chairman of subcommittee, in the chair.

Mr. KITCHIN. Well, Mr. Bourne, suppose you begin with those items of damages.

Mr. BOURNE. Very well, Mr. Kitchin. Do you want Mr. Dickson to be sworn?

Mr. KITCHIN. No; as the memorial is sworn to, it is unnecessary.

Mr. BOURNE. The memorial is sworn to, anyhow.

Mr. KITCHIN. Did you file a statement of damages with the memorial?

Mr. BOURNE. Yes. The memorial, including statement of damages attached thereto, is verified by each of the individual claimants. Now, Mr. Dickson.

STATEMENT OF MR. HARVEY M. DICKSON, OF NORFOLK, VA.

Mr. DICKSON. The first item, gentlemen, is "Interest on purchase price, $25,000," for about four and one-half years.

Mr. MASON. It is a little more than that, is it not?

Mr. DICKSON. Yes; it is a little more than that. I was not, of course, figuring to the day.

Mr. KITCHIN. Is that the time that you were not permitted to do any work or cut any of the timber, after the first injunction until it was settled?

Mr. BOURNE. Go ahead and explain it, and answer the questions, Mr. Dickson.

Mr. DICKSON. I made up this statement a good while ago. Some of it is not as fresh as it was when I made it. This first item is "Interest on the purchase price, $25,000," for four and one-half years, or until the date of confirmation of contract by the Government, less $1,200 rebate allowed by the Indians. We got the Indians to allow $1,200 of interest on some deferred payments.

Mr. KITCHIN. My question was, Was your plant idle and your entire operations suspended during those four and one-half years, so that you could not cut any of the standing timber—idle by virtue of the injunction?

Mr. DICKSON. Yes, our whole operations were suspended.

Mr. FULTON. On what ground do you charge that against the Government?

Mr. BOURNE. Explain what the item is, what it means.

Mr. DICKSON. Was idle by virtue of the injunction. This item was not for the plant, however. This was simply for the interest on the purchase price of the property that we had either paid or were paying interest on during that time.

Mr. BOURNE. Now, Mr. Dickson, were you paying the Indians any interest during this period when your operations were suspended by this injunction?

Mr. DICKSON. We were.

Mr. KITCHEN. You were forbidden by that injunction to cut any of the standing timber during the four and one-half years for which you charge interest?

Mr. DICKSON. Yes, sir.

Mr. BOURNE. And does that item represent interest that you actually paid or lost on account of the purchase price during the period when your operations were suspended?

Mr. DICKSON. It represented interest on notes for part of purchase money that were held by the Indians at that time, or interest on money that had been paid in cash on account of the purchase price of this timber.

Mr. FULTON. In addition to this item you have charged against the Government all that you lost from not being able to run the plant, have you not, and loss of lumber?

Mr. DICKSON. No, we have not. You will find that we have to make an equitable bill. We have not charged up all we lost by any means in this matter.

Mr. FULTON. The reason I ask the question is this: That it seemed to me that if you had charged the Government up what you lost from not operating the plant that would include your damages, and you would not be entitled to interest.

Mr. BOURNE. Each element of damage is stated there, Mr. Fulton.

Mr. FULTON. What is the amount of the item?

Mr. DICKSON. The net amount of the item is $5,738.

Mr. BOURNE. Mr. Dickson, in that amount is there included any item of interest on your claim from the time when the contract was confirmed by the Interior Department—that is, for the past ten years, from 1898 to 1908?

Mr. DICKSON. No, sir. In fact this item reads, "Until date of confirmation by the Government, less $1,200 rebate allowed by the Indians."

Mr. FULTON. In order that I may have the matter fully in mind as we go along, $25,000 was the purchase price?

Mr. DICKSON. That was the purchase price?

Mr. FULTON. And the other expenditures you made were in the way of improvements and supplies?

Mr. DICKSON. Yes. We took the purchase price of the property that we were either paying during the time we were hung up by the injunction—either that which we paid to the Indians or had previously paid, and in order to be perfectly fair and equitable in the matter we allowed from this $1,200, which, as I said, we succeeded in getting the Indians to allow us in consequence of our paying two notes, a balance on one note and another note, according to our contention, that was not due, because we had been suspended all this time and because of the fact that this interest had been accruing, and we got a $1,200 rebate allowed off the interest charge.

Then the next item is "Expense of two trips to look at work, and so forth, at Soco, $120."

Mr. FULTON. What was that for? What was the occasion or necessity of it?

Mr. DICKSON. You see, we were on the ground in December, and we bought the property in January and went back to Illinois, and this was one trip when I came down when the Indians insisted on being put to work, doing something. The Indians were backing us and wanted this contract confirmed, and were anxious to go to work.

Mr. FULTON. That was really an expense that grew out of the litigation?

Mr. DICKSON. Expense in going about to see about building roads, and generally looking after the property.

Mr. FULTON. Would you have been at that expense if there had been no litigation?

Mr. DICKSON. No, sir.

Mr. FULTON. Was this item you charge for after the second injunction?

Mr. DICKSON. After the first injunction. No, it was before the first injunction, in the spring of 1894.

Mr. FULTON. Would you have had to go down there, whether there was any injunction or not?

Mr. DICKSON. There had been no injunction at that time. I went down and set the Indians to work to see whether the Government would interfere. There had been threats of an injunction.

Mr. FULTON. On what ground do you justify that claim against the Government?

Mr. DICKSON. On the ground that if we had been permitted to go on with our work; if we had had the confirmation——

Mr. FULTON. As I understand it, Mr. Dickson, at the time of this expenditure there was some doubt possibly existing in your mind whether the Government was going to interfere?

Mr. DICKSON. Yes.

Mr. FULTON. But at that time it had not interfered, and whether it would have interfered or not you would likely have had to go to that expense, would you not?

Mr. DICKSON. Probably; but we would have been operating the property and would have gotten the benefit of it.

Mr. FULTON. Then on what ground do you base that claim against the Government? What had it done up to that time?

Mr. DICKSON. Nothing; but it had failed to confirm the contract.

Mr. FULTON. The Government had not stopped it yet.

Mr. BOURNE. Let me make this statement right in that connection. I think I understand the contention. This expenditure was a total loss by reason of the subsequent action of the Government, whereas it would not have been a total loss if it had not been for the subsequent action of the Government.

Mr. FULTON. Then the expense would not have been a total loss, but the work that was done or ordered by reason of going down there would have been a total loss, and would not the proper charge have been for the work done there?

Mr. DICKSON. The expense itself was really a total loss. The other charge as to work done is a separate item. The expenditures were absolutely useless by reason of the subsequent action of the Government.

Mr. KITCHIN. Go ahead with the next item.

Mr. DICKSON. "Paid D. L. Boyd for making roads, $200."

Mr. FULTON. When was that, and how much?

Mr. DICKSON. That was on the 23d day of February, 1895. The settlement was made then.

Mr. FULTON. When was the contract made?

Mr. DICKSON. You mean the contract with Boyd?

Mr. FULTON. Yes.

Mr. DICKSON. There was really no contract with him. As I said before, the Indians insisted on our going to work down there, and in order to satisfy the Indians and keep the matter moving right along we went to work building roads and preparing to cut the timber.

Mr. FULTON. When did you employ this man?

Mr. DICKSON. Sometime during the summer or fall of 1894, as I remember.

Mr. KITCHIN. Before the first injunction?

Mr. DICKSON. Before the first injunction.

Mr. FULTON. What was the amount of that work?

Mr. DICKSON. Two hundred dollars.

Mr. FULTON. What did he do?

Mr. DICKSON. He built roads and cut roads through the timber and graded roads.

Mr. FULTON. How far distant were they?

Mr. DICKSON. I think the roads were started in three different places.

Mr. FULTON. How long was the time of the work?

Mr. DICKSON. I do not know the exact time. He rendered a bill against us of seven hundred and some odd dollars for the roads, but we refused to pay it.

Mr. KITCHIN. After this last injunction was dissolved or the matter had been settled, did you not make use of these roads afterwards?

Mr. DICKSON. No, sir.

Mr. KITCHIN. Why?

Mr. DICKSON. Because they had been washed away. As you will understand, Mr. Kitchin, mountain roads wash away very soon. They were practically valueless to us.

Mr. KITCHIN. After four years those roads were washed up and became practically useless?

Mr. DICKSON. Yes. We went right on and built them over again. We put in, for instance, culverts over runways, over little streams. We put in logs on low side of roads to keep them from washing away.

Mr. KITCHIN. These roads are built temporarily, just to last long enough to get out the timber?

Mr. DICKSON. Yes.

Mr. FULTON. You could not tell just how long Boyd was employed and how many men he had to help him, so as to get at the foundation of the reasonableness of the thing?

Mr. DICKSON. I suppose he was employed in there about sixty or ninety days. I know I went down there, and there would have been a great deal larger bill, but I saw that what he was doing might be away from where we wanted the roads, and I thought he was spending too much money, and I stopped him.

Mr. FULTON. How many men had he employed?

Mr. DICKSON. I think he had twelve when I went down there. Of course that is a good while ago. They were all Indians that he had employed, you understand.

Mr. FULTON. You do not know how much supplies he furnished in the way of tools?

Mr. DICKSON. Hammers, and axes, and nails, and things like that?

Mr. FULTON. Yes. How much for that?

Mr. DICKSON. That would be a matter of memory. I think I paid the bill myself, and I think we paid about twenty some odd dollars, I think $22 and something, for shovels and picks and tools. That is not in this $200 item at all, you understand.

Mr. FULTON. This claim, then, includes simply claims for labor? It does not include anything for supplies?

Mr. DICKSON. No. The supplies we furnished ourselves. We bought and paid for them.

Mr. FULTON. You think that was a reasonable charge for the work that was done?

Mr. DICKSON. It was really more than reasonable, and as I tell you, Mr. Boyd's bill was seven hundred and odd dollars, and we threatened to let him sue for his bill, because when this bill was paid we were hung up with the injunction and did not know whether we would ever get the property at all. He came in and said, "I expended this money under your direction," and he had a bill of seven hundred and some odd dollars against us, and finally we compromised it at $200 and gave him a check for it.

Mr. BOURNE. Now, Mr. Dickson, did you and Mr. Mason thoroughly investigate this work of Mr. Boyd's before you arrived at this settlement with him?

Mr. DICKSON. We looked it over; yes.

Mr. BOURNE. Did you satisfy yourselves that that was a reasonable and fair settlement with Boyd?

Mr. DICKSON. I can not say about Mr. Mason, but I satisfied myself that it was.

Mr. KITCHIN. What did Boyd pay to the Indians for that land?

Mr. DICKSON. Fifteen thousand dollars.

Mr. KITCHIN. What did you pay?

Mr. DICKSON. Twenty-five thousand dollars. He bought it on the 29th of September, 1893, and we closed the trade for it on the 12th day of January, 1894.

Mr. BOURNE. I will ask you, Mr. Dickson, if this property had not been advertised before it was ever sold to Boyd—advertised in different lumber papers?

Mr. DICKSON. I have been so informed. I never saw the advertisements.

Mr. FULTON. You had no dealing, then, with the Indians in the purchase?

Mr. DICKSON. Not direct; no, sir.

Mr. BOURNE. Except that Mr. Smathers represented the Eastern Band of Cherokee Indians and was much interested in selling the property. They sold it to Boyd and were rather interested in sustaining their title and contract.

Mr. FULTON. As I understand, you simply purchased the standing timber, and not the ground?

Mr. DICKSON. Yes; the standing timber, and not the ground.

Mr. FULTON. How many acres of land were there?

Mr. DICKSON. About 30,000.

Mr. FULTON. Have you ever estimated the amount of timber?

Mr. DICKSON. We never put any other experts on it, but both Mr. Mason and myself, who have had years of experience in the timber business, rode in there for three days, with some other parties. We examined the property critically, and we estimated that the timber would cut 1,000 feet per acre. It was from 9½ to 20 miles away from the railroad, but it was not all such timber as could be marketed at a profit; it was like all this mountain timber.

Mr. FULTON. Was the timber thick or scattered?

Mr. DICKSON. It was very much scattered, of course. Just in an offhand way we made an estimate that there would be 1,000 feet per acre, or that we would get 30,000,000—I think I made that statement. There was a little tract up in the corner we called 4,000 acres. We included that, and there has been cut from the tract up to the present time about 14,000,000 feet. Instead of cutting, as I estimated, 1,000 feet to the acre, it is going to develop, when the contract is finished, which is now within a few months of expiration—it is going to develop that the property will have produced about 16,000,000 feet, instead of 30,000,000.

Mr. KITCHIN. You mean 16,000,000 of merchantable lumber?

Mr. DICKSON. I mean what has been cut or marketed.

Mr. KITCHIN. Does that mean what you have cut and sold in the markets?

Mr. DICKSON. Yes. It is going to run somewhere between 16,000,000 and 16,500,000 for the entire tract.

Mr. KITCHIN. The only thing that let you out is the increase in the value of the timber?

Mr. DICKSON. Yes.

Mr. FULTON. Did this tract lie so that the timber on it could be cut and logged to one point?

Mr. DICKSON. No.

Mr. FULTON. You would have to move around from place to place?

Mr. DICKSON. We intended to make one setting, one mill setting, on Soco, and planned to put in a large band mill there and railroad our logs down to the mill. Before we got into this trouble and after cutting off that watershed we intended to go up the Ocona Lufty country, another branch that came around back of the mountain, you understand, and have two or three mill sites up that river.

Mr. FULTON. This tract of land was mountainous, was it?

Mr. DICKSON. Yes; it was right in the Great Smoky Mountains.

Mr. BOURNE. Were there any restrictions in the contract as to the size and kind of trees you were permitted to cut?

Mr. DICKSON. There were.

Mr. BOURNE. Please state what they were.

Mr. DICKSON. I do not know that I can remember, Mr. Bourne. I will say this, however, that the Indians' interests were guarded very closely in that matter, and only trees of certain size were to be cut.

Mr. KITCHIN. Who owns those lands?

Mr. BOURNE. This corporation—the Eastern Band of Cherokees.

Mr. MASON. The restriction on sizes of timber to be cut under our contract was 22 inches in poplar, 20 inches in chestnut, 15 inches in oak, and for ash and all woods except box elder and hickory 12 inches. The box elder is what they call acacia wood, the wood that the ark was built out of. There is very little of it. There has been only about two carloads cut on the tract.

Mr. DICKSON. I think those are the correct sizes.

Mr. KITCHIN. You were to cut no timber under those sizes?

Mr. DICKSON. No. We could not cut timber under those sizes.

Mr. FULTON. Now let us get to the next item.

Mr. DICKSON. The next item is "Expenses of H. M. Dickson to Asheville and return to Mattoon, $110.87."

Mr. FULTON. That was before the first injunction?

Mr. DICKSON. Yes, sir.

Mr. FULTON. And that was something like the first item?

Mr. DICKSON. Yes, sir.

Mr. FULTON. All right. Now give us the next one.

Mr. DICKSON. W. T. Mason, "Expenses of W. T. Mason, two trips to Washington, one in June and one in July, 1894." That was in the same action before the Department, and looking after our fences in the matter. That was before the first injunction. That was $100.

Mr. FULTON. The next.

Mr. DICKSON. "Loss of H. M. Dickson's time from the first of March, 1894, until the organization, January 15, 1895, $1,750."

Mr. FULTON. That was followed by the first injunction?

Mr. DICKSON. You see, this first injunction was filed against us—when?

Mr. BOURNE. In October, 1894.

Mr. DICKSON. A part of the period covered by this item was before the first injunction, in October, 1894, and a part of it after the injunction.

Mr. FULTON. How much before? That ought to be fixed in some way.

Mr. DICKSON. Seven and a half months before and three months after.

Mr. BOURNE. Mr. Dickson, was this loss of your time accounted a loss by reason of the fact that the Government afterwards interfered with you, and the work that you did at this time was absolutely worthless? I mean, did it turn out to be of no benefit to you in this transaction?

Mr. DICKSON. A large portion of it, yes; but I can not answer that positively from the fact that I do not know. Some of the work I did during that time might have had to be done later.

Mr. BOURNE. I will ask you what your time was reasonably worth?

Mr. DICKSON. My time was reasonably worth $2,500 a year.

Mr. BOURNE. Did you charge anything like that in the itemized statement of damages?

Mr. DICKSON. No, sir. I have only charged $1,750.

Mr. FULTON. What were you doing during that time?

Mr. DICKSON. Nothing. You see, I was suspended between heaven and earth during most of that time, out of business in Illinois, and waiting to move my family, and on expense.

Mr. FULTON. What position did you occupy in this company? Was it a corporation or a company?

Mr. DICKSON. At this time it was a company, Mr. Mason and I together; and afterwards we incorporated the Dickson-Mason Lumber Company.

Mr. FULTON. What was your position in it and salary?

Mr. DICKSON. Mr. Mason and I, owning the entire capital stock, we said we would consider $1,800 a year apiece the salary account.

Of course we charged what we needed to live on, and charged it to ourselves individually.

Mr. KITCHIN. Was it understood, and did you give your entire time, both of you, to this work?

Mr. DICKSON. You will find in the next item, Mr. Kitchin, that Mr. Mason did not give his whole time, and, consequently, he is given only a portion of his salary; but I did give my entire time.

Mr. KITCHIN. Was it understood that you would give your time, and did you give your time?

Mr. DICKSON. Yes; I did no other business that entire year.

Mr. FULTON. After the injunction was dissolved, or rather, after the contract was approved by the Secretary of the Interior, then you went to work operating this plant?

Mr. DICKSON. Yes, sir.

Mr. FULTON. About when was that?

Mr. DICKSON. It was approved in the latter part of August, 1898. The period covered by this salary item, you understand, Mr. Fulton, was way prior to this time.

Mr. FULTON. You did not charge for your time during all that period?

Mr. DICKSON. No, sir.

Mr. FULTON. Why not?

Mr. DICKSON. I suppose because we were too modest, Mr. Fulton. A later item will fully explain how I charged for my time, in estimating damages on that account. If you will wait a moment until we come to that item, you will find the matter fully explained.

Mr. FULTON. All right.

Mr. DICKSON. The next item is "W. T. Mason's lost time during the year, 1894, at $833.35."

Mr. KITCHIN. Was this before the first injunction?

Mr. DICKSON. Yes; this item was before the first injunction.

Mr. KITCHIN. When you went back to the operation of your plant and the cutting of the timber after the ratification of the contract by the Interior Department, did not your company get the benefit of your services rendered before the first injunction?

Mr. DICKSON. I do not think so, Mr. Kitchin. It was absolutely a loss of the whole thing.

Mr. FULTON. During that time for which he makes claim for eight hundred and some odd dollars, he was doing nothing at all?

Mr. DICKSON. He was attending to his business in Illinois a portion of the time and that is why he did not put in for full time.

Mr. KITCHIN. How much time did he spend in this timber business in Buncombe County?

Mr. DICKSON. I suppose about half of his time.

Mr. FULTON. In other words, you are not charging so much for his services as you are for the loss of what he did do? In other words, he must have done some work there when the injunction came up, and you lost the benefit of that work?

Mr. DICKSON. Yes.

Mr. FULTON. What is the nature of that work?

Mr. DICKSON. A little of everything, Mr. Fulton. I do not know that I can specify just what it was. Mr. Mason was a partner.

Mr. KITCHIN. I understood a while ago that your services charged there were rendered after the first injunction and during the time you were thrown out of work then.

Mr. DICKSON. No; you are mistaken.

Mr. KITCHIN. It was before?

Mr. DICKSON. Yes; it was before and after.

Mr. BOURNE. It was partly before and partly after.

Mr. DICKSON. The reason it was put in in this way, gentlemen, is the fact that we incorporated at that time, January 15, 1895, whereas we had been operating as a partnership prior to that time.

Mr. BOURNE. In order to clear this matter up, let me interpose right there and say that this item covering not only the services rendered before the first injunction, but also services rendered after this injunction—this item includes an allowance for salaries up to January, 1895?

Mr. DICKSON. Yes; to January 15, 1895.

Mr. BOURNE. And the first injunction was served in October, 1894?

Mr. DICKSON. Yes.

Mr. BOURNE. And it includes services rendered both before and after the service of the first injunction?

Mr. DICKSON. Yes.

Mr. FULTON. During the time for which you charged for services, what did you do?

Mr. DICKSON. I had general management of the business. I went down there, back and forth, and spent probably half of my time.

Mr. FULTON. Outside of all buildings and overseeing the building of these temporary roads and ways, what, if anything else, was done by you or any member of your company?

Mr. DICKSON. I had the general management of our business. Mason and I were perfecting its organization on a large scale, in order to develop this property to the best advantage, making contracts for logging and sawing, buying supplies, and doing everything to promote the business. We were doing this during a part of this period.

Mr. KITCHIN. You had some of the temporary buildings put up?

Mr. DICKSON. Yes, and we were preparing for other buildings also.

Mr. FULTON. I understand you are not charging your salary during the time you were working at your other business?

Mr. DICKSON. No.

Mr. FULTON. But you are charging for the work or services which you rendered from which you had no benefit afterwards?

Mr. DICKSON. Yes.

Mr. FULTON. Now, I am trying to find out what you did that you lost; what you did at that time which was of benefit to your company and which afterwards you were unable to avail yourselves of by reason of this injunction?

Mr. BOURNE. Mr. Dickson, do you recall when the first injunction was dissolved?

Mr. DICKSON. It was in November, 1894.

Mr. BOURNE. Now, Mr. Dickson, I would like to know if that period you charge for there does not cover from November until the middle of January, and if you were not constantly engaged in making contracts for the development of this property, and the purchase of machinery and supplies of all sorts, and getting ready for this development?

Mr. DICKSON. Yes, sure.

Mr. KITCHIN. What became of this machinery? Did you use that machinery afterwards?

Mr. DICKSON. We used some of it. Some of it we had to sell, and some of it we had to lose.

Mr. KITCHIN. Did you have to sell it at a loss?

Mr. DICKSON. Yes.

Mr. BOURNE. He charges up the loss.

Mr. DICKSON. The point I wanted to get to on Mr. Fulton's question was this: You see, from the time the injunction was dissolved until January 15, was the time we got into this trouble, because we had then spread ourselves out over the entire country, expecting to go right to work. Those were the most active months in our whole organization. That was after the first injunction was dissolved, and we thought we were free and clear, and I immediately packed my goods and with my family moved to Asheville, and went on the property and began operations.

Mr. BOURNE. And made contracts?

Mr. DICKSON. Yes; and not only made contracts, but cut down timber for all the construction work for all our buildings, and the tramroads, and all that kind of thing.

Mr. FULTON. Now, the next item.

Mr. DICKSON. The next item is "Interest on railroad equipment, $2,650 for nine months, $119.25."

Mr. FULTON. Explain that.

Mr. DICKSON. After this first injunction was dissolved I bought this railroad equipment—locomotives, cars, and rails—expecting to operate my tramroad in the woods there. The equipment arrived on the sidetrack after the Government had stopped our work. It was paid for. It lay there for nine months.

Mr. KITCHIN. Where did it come from?

Mr. DICKSON. From Bay City, Mich. After nine months' lying there we succeeded in disposing of the railroad equipment at $2,650, and charged nine months' interest on that $2,650.

Mr. FULTON. What was the original cost of the railroad equipment?

Mr. DICKSON. We practically got cost for it. Two thousand six hundred and fifty dollars was practically what it cost us.

Mr. FULTON. What are you out?

Mr. DICKSON. The interest for nine months.

Mr. KITCHIN. Did you make any profit on it when you sold it?

Mr. DICKSON. Not a dollar.

Mr. FULTON. In other words, you were charging for what would have been the probable benefit for you if you had gone on?

Mr. DICKSON. Exactly.

Mr. BOURNE. You sold the rails?

Mr. DICKSON. Yes; the whole thing for $2,650.

Mr. BOURNE. Does that itemized statement include any cost you were put to in going to Bay City to make this purchase?

Mr. DICKSON. No, sir.

Mr. KITCHIN. Does it include the freight?

Mr. DICKSON. Yes. I paid $1,000 for the engine at Bay City, Mich. I remember the engine; I do not remember amount paid for the cars. The engine was the only thing we got out on. The freight bill was enormous.

Mr. KITCHIN. The total amount was $2,650?

Mr. DICKSON. Yes, sir; and nothing was charged for looking it up, or purchasing it, or anything of that kind.

Mr. FULTON. Now, the next item.

Mr. DICKSON. The next item is, "Paid Indians on leased ground, $60." That was a total loss. We had an Indian tear down his shack where we were going to put this mill, and we paid him $20 a year for this ground where we were going to put the sawmill.

Mr. BOURNE. What was that leased for?

Mr. DICKSON. For the purpose of erecting a sawmill and commissary building?

Mr. FULTON. In this contract did you have the right to use the ground for the erection of buildings?

Mr. DICKSON. You see, the Indians owned or claimed to own, or had been allotted out of the corporation, certain little pieces of land for their individual use.

Mr. KITCHIN. That piece of land was not included in your contract?

Mr. DICKSON. Our contract provided that if we should damage any of these little cropping places that the Indians had, that was a matter that we had to adjust between ourselves and them. We had no possible way of locating our mill at the advantageous point we wanted to locate it without getting this old Indian out of the way, so that we had to buy him out.

Mr. FULTON. You paid him $60?

Mr. DICKSON. Yes; we paid him $60.

The next is "Interest on improvements, timber, and so forth, 148,000 feet at $6 per 1,000 for three years."

Mr. FULTON. What is the total?

Mr. DICKSON. One hundred and fifty-nine dollars and eighty-four cents. When the original injunction was dissolved, we immediately entered into a contract for the purchase of a large band mill in Cincinnati, and I immediately let a contract with a party to saw the necessary framing timber out of hemlock for the erection of all our buildings and for the erection of this band sawmill. The small sawmill that I had the man under contract with to saw material for the building had gotten well under way, and he had got out 148,000 feet of lumber for our various buildings, and after we were permitted to go on with our work again we made use of this 148,000 feet of timber in our buildings and improvements there, so that we thought it was only fair to charge for the interest on what we had put into that for that length of time and no charge for the material itself.

Mr. FULTON. I understand.

Mr. DICKSON. The next is "Money paid hands in March, April, May, and June, 1895."

Mr. KITCHIN. Explain that.

Mr. FULTON. Was that after the injunction?

Mr. DICKSON. That was after the first injunction was dissolved.

Mr. FULTON. This injunction was dissolved in November, 1894?

Mr. DICKSON. Yes, but this work was done in March, April, May, and June. It was while the second injunction was pending, I think, and it was money that we had to expend to take care of stuff that we had on the ground. For instance, as I tell you, we had this mill down there that cut this lumber, and we had a commissary building two-thirds completed and lumber scattered all around for that. It was money we paid out protecting the property we had in there during these months.

Mr. FULTON. How much was it?

Mr. DICKSON. One hundred and twenty-one dollars and two cents.

Mr. FULTON. Would you not have had to have this service performed whether the injunction was granted or not?

Mr. DICKSON. No, sir. We were not allowed to do a thing. We could not do any work.

Mr. FULTON. In what way did you protect it—getting it together?

Mr. DICKSON. Getting it together, and keeping some men there watching it, and all such things as that. We could not do any construction work at all.

Mr. FULTON. And this expenditure would not have been necessary otherwise?

Mr. DICKSON. No. We would not have had it at all.

The next item is "Eight months' horse feed at $10 a month, $80." We had a horse down there that we boarded at $10 a month. There was eight months' time the horse did not do any service at all. It was simply kept in the barn and fed. I used the horse in riding back and forth from the mill, and used him on the tram car and in riding around over the property.

The next item is "Damage to logs, 1,500,000 feet, approximately, on account of not being sawed, $4,500."

Mr. FULTON. Now tell us about that.

Mr. DICKSON. Well, when the first injunction was nonsuited we immediately put a large gang of men to work cutting timber, because it was then in the winter months, and we wanted to get the timber felled.

Mr. KITCHIN. You say it was in the winter months, and you wanted to get the timber felled. Is that the proper time to cut timber?

Mr. DICKSON. They do not now pay much attention in western North Carolina to the time when they cut it.

Mr. KITCHIN. It makes a great deal of difference in my country.

Mr. DICKSON. They cut it right along. That is in the hard woods. We had been held up for a year, and we were very anxious, as our time was expiring. We had fifteen years in which to cut the timber off. The moment we were released from the first injunction I put every man to work that we could handle, and we cut this timber down right and left. We had a superintendent, this man Hyatt, and he kept a log book, by which he gave us at the close of the month the number of logs, the size of the logs, and whether they were chestnut, oak, maple, or what not; the kind of timber that was in the logs. That is where we get these figures. That log book figured up about practically 1,500,000 feet. That was not timber felled alone, but it was also timber felled and cut into log lengths.

Mr. FULTON. That was during the time from the dissolution of the first up until the granting of the second injunction?

Mr. DICKSON. Yes.

Mr. KITCHIN. I understand you had a gang of men along, cutting trees down, and another gang cutting them up into logs?

Mr. DICKSON. Yes.

Mr. KITCHIN. And the men going on before and cutting the trees down cut a great many more thousand feet than the other fellows could cut into lengths?

Mr. DICKSON. Yes; more than the other fellows; and this explains how we failed to put in a claim for any damage to timber in excess of 1,500,000 feet. Hyatt's log book showed only this amount of timber trees felled and cut into logs. We entirely overlooked the fact that a great many timber trees had been cut down, but not cut into logs, and that these would not appear in Hyatt's log book. Our itemized statement of damages only covers what appears in Hyatt's log book.

Mr. FULTON. What did you do with that timber when you went in there, this million and a half feet?

Mr. DICKSON. We cut it up. We figured out $3 per thousand feet damages.

Mr. BOURNE. I want to ask you at this point if that stuff was not exposed to the suns of two summers?

Mr. DICKSON. Yes; I think it was.

Mr. FULTON. What was the market price of that timber, that million and a half feet, at the time the second injunction was granted?

Mr. DICKSON. Do you mean timber or the lumber?

Mr. FULTON. Lumber.

Mr. DICKSON. That is impossible to answer, because various kinds will bring various prices, you understand.

Mr. KITCHIN. What would it average, per thousand feet, sawed, if it had not stayed out in the weather, if you could have sawed it at a proper time after it had been cut?

Mr. DICKSON. I can only give you an estimate. I should say it would be worth from $12 to $14 dollars, log run, delivered at the railroad.

Mr. KITCHIN. What was it worth in the condition it was?

Mr. DICKSON. We estimated it would be worth $3 a thousand feet less on account of the damage.

Mr. FULTON. What did you receive for this million and a half feet after it was sawed?

Mr. DICKSON. I do not know.

Mr. KITCHIN. What would it average in value per thousand feet?

Mr. BOURNE. Why don't you know?

Mr. DICKSON. For the reason that it was not kept as a separate item on our books. It was run right along with some lumber that we were buying that came into Whittier, and was not kept separate.

Mr. BOURNE. I will ask you in that connection if you could have sold this damaged lumber by itself and made any profit out of it?

Mr. DICKSON. No, sir.

Mr. KITCHIN. By using it with other good timber, did that bring down the general price of the whole, the good and that, too?

Mr. DICKSON. It would have that effect; yes.

Mr. FULTON. You say you had a million and a half feet in log measurement?

Mr. DICKSON. Yes; log scale.

Mr. FULTON. Can you tell the number of feet of lumber these same logs produced?

Mr. DICKSON. The superintendent, Mr. Hyatt, says there were about 2,000,000 feet, board measure, which he sawed out, but we only mention in our statement of damages a million and a half of the timber that was cut into logs. Now, the cutters had gone far ahead and cut thousands of logs that were not included in this at all. We have done nothing with that other, except Mr. Hyatt says this stuff

sawed out amounted to 2,000,000 feet. We could care only for what was on the ground.

Mr. FULTON. What did that amount to that was felled and not cut into logs?

Mr. DICKSON. Our log book showed a million and a half feet cut into logs. There was a lot of it that was so worm-eaten that we never moved it off the ground; but notwithstanding that fact Mr. Hyatt says there were about two millions of that product, so that the residue must have been in the neighborhood of three-quarters of a million feet.

Mr. FULTON. Let us follow down this million and a half feet of logs. You say Mr. Hyatt says that cut about 2,000,000 feet of lumber?

Mr. DICKSON. Yes, out of that felled timber.

Mr. FULTON. Does that include both the logs and what was cut down, but not in log lengths?

Mr. DICKSON. Yes.

Mr. FULTON. You think you had, of fallen timber that was not cut into logs, from half to three-quarters of a million feet that was a total loss?

Mr. DICKSON. No, not a total loss; a partial loss.

Mr. FULTON. Into how much will the log scale saw out on the lumber scale?

Mr. DICKSON. I would say it would shrink about 10 per cent.

Mr. FULTON. You got about 2,000,000 feet of lumber?

Mr. DICKSON. Yes.

Mr. FULTON. Is there any way to estimate the amount of this timber which was cut down but which was not cut into logs at the time the second injunction was served?

Mr. DICKSON. It is impossible to estimate it exactly. But our log book showed a million and a half feet of timber that had been felled and cut into logs at that time, and as Mr. Hyatt shows in his affidavit that we actually sawed out 2,000,000 feet of lumber from the timber trees that had been cut down at the time, I estimate that of the timber trees that had been felled but not cut into logs at the time of the second injunction we must have used about 700,000 or 750,000 feet. This estimate allows for shrinkage under log scale of about 10 per cent. Now, of course, while we used the lumber produced from this timber, it was badly damaged. In addition to the foregoing elements of damage to timber or lumber, there must have been about 500,000 feet of timber trees that were cut down and left in the woods—a total loss.

Mr. FULTON. But which you used?

Mr. DICKSON. We used some of them.

Mr. FULTON. Can you estimate how much was left there in trees cut down which was a total loss?

Mr. DICKSON. We can not estimate them definitely; about 500,000 feet.

Mr. KITCHIN. Do you know as a fact that there were many of them?

Mr. DICKSON. There were thousands of feet of them. I went over there myself, and practically every ash log we had cut was ruined The worms had gone into them and ruined them. In a great many of the poplar logs, the bark being on the logs and the logs being on the

ground, the worms had begun working on the underside of the logs. The hickory we never moved a tree of. The worms ate that all up. As to the lynwood or basswood—if you are conversant with that, Mr. Fulton—it is a very soft, punky wood, and the sawmill men sometimes say it will rot overnight. The buckeye wood is worse than the basswood. That was practically ruined. I can not give the percentage to save my life.

Mr. FULTON. Make an estimate from your investigations there of what was the number of feet of timber that was lost——

Mr. KITCHIN. Or absolutely lost——

Mr. BOURNE. Cut down and lost.

Mr. MASON. We have not put any of that timber in.

Mr. DICKSON. I can only give you an estimate of this, because I have no possible way to get down to the facts and figures of it. My best judgment would be that there was at least 500,000 feet of logs that were a total loss.

Mr. KITCHIN. Have you put that in?

Mr. DICKSON. No, sir; not a dollar of it; for the reasons hereinbefore given in connection with Neyatt's log book.

Mr. FULTON. At that time what would be the reasonable value of that 500,000 feet?

Mr. DICKSON. At that time the reasonable value per thousand feet, as they lay there, cut down, I would say $3 a thousand. The timber cost us, as we have demonstrated it by having operated the property,—the standing timber cost over $1.50 a thousand feet, to say nothing about cutting it into logs.

Mr. FULTON. Now how much was this 2,000,000 feet of lumber worth at the time you sawed it?

Mr. DICKSON. About $12 per 1,000 feet at the railroad track.

Mr. KITCHIN. What was it worth at that time, in your judgment, per thousand feet in the condition in which it was?

Mr. DICKSON. About $12 per 1,000 feet at the railroad track.

Mr. BOURNE. After it had been damaged?

Mr. DICKSON. Yes.

Mr. KITCHIN. What proportion of the logs would you lose—10, or 15, or 20 per cent?

Mr. DICKSON. I think safely 15 per cent. That is, of logs that we took in in a damaged condition. I do not mean stuff that we left in the woods and which did not come in at all. The lumbermen in certain localities are in the habit of putting logs in the river, these logs being in the stream for two or three years, waiting high water to bring them down; and they consider that such logs lose their sap, and it is estimated that they lose 15 per cent of their product. That is the way I get at it.

Mr. FULTON. The measure of damages is the difference between the fair market value of this property at the time you stopped work and what it was when you resumed it?

Mr. DICKSON. You can see from what I have told you, Mr. Fulton, that we are very conservative when we say $3 less a thousand on a million and a half feet. I feel the same as though I was on the witness stand under oath, and I do not want to make any statements at random in the matter.

Mr. FULTON. What I was trying to get at is this: Your testimony is really a conclusion. It would be clearer if it could be put into such

shape that the committee could draw its own conclusion. If you give the value at one time and the value at another time, then we could estimate the damages.

Mr. DICKSON. Say $3 a thousand feet on the 2,000,000 feet, mentioned by W. S. Hyatt.

Mr. BOURNE. He wants you to give what that stuff was worth, the fair market value of it, if you had been permitted to saw it out, and then what it was worth, say, on the average, per thousand feet in its damaged condition. That is, under your theory it would be $3 less than its original value.

Mr. DICKSON. I say it would have been worth $15 a thousand if it had been sawed in its natural condition, and it was only worth $12 a thousand in the shape it came in; a difference of $3 a thousand feet.

Mr. KITCHIN. That would be $3 difference?

Mr. DICKSON. Yes.

Mr. KITCHIN. Where is Mr. Hyatt?

Mr. DICKSON. He is working for Mr. Mason yet.

Mr. KITCHIN. Has he given an affidavit in this matter?

Mr. DICKSON. Yes.

PROCEEDINGS OF THIRD SESSION OF SUBCOMMITTEE.

COMMITTEE ON CLAIMS,
HOUSE OF REPRESENTATIVES,
Saturday, February 29, 1908.

The subcommittee met at 3 o'clock p. m., Hon. Claude Kitchin in the chair.

STATEMENT OF MR. HARVEY M. DICKSON—Continued.

Mr. KITCHIN. I want to ask you one question before you go on. How did it come about that you went back in there to get that timber after the Government had gotten out an injunction, and when was it?

Mr. DICKSON. The court, with the consent of the Government, allowed us to go in there under bond in order to save the felled timber. Both realized that they were jeopardizing this by letting it lie there rotting, and after something over a year, when the case came up in Asheville, they permitted us, under a $2,500 bond, to go in and take up this down timber that we had cut; that is what we went in there for, pending the final settlement.

Mr. KITCHIN. You do not remember the amount of the bond?

Mr. DICKSON. I think it was $2,500; I am quite sure of it.

Mr. KITCHIN. They would not let you go in there until after a year?

Mr. DICKSON. I think it was something over a year, Mr. Kitchin; I am not positive about that.

Mr. BOURNE. That is my recollection of it, but the amount of that bond I do not recollect.

Mr. DICKSON. I think it was $2,500, but I do not recall the exact amount.

Mr. KITCHIN. If they had so much timber on there 2,000,000 feet of timber—why did they require such a little bond?

Mr. DICKSON. I do not know that they knew that there was so much down there.

Mr. KITCHIN. Twenty-five hundred dollars would probably cover the stumpage as it stood?

Mr. DICKSON. I suppose that was what they were figuring on. I can not tell you why the bond was placed at that sum.

Mr. KITCHIN. I presume that was only to cover the stumpage that you had already cut.

Mr. DICKSON. I know the bond was made in Asheville, and I think it was $2,500.

Mr. BOURNE. My own impression is it was $3,000. Mr. Bourne found by examining the record on appeal in case of United States *v.* Boyd, attached to the memorial, that this bond was in the sum of $3,000.

Mr. DICKSON. It is a matter of some years ago, and something I have not thought of.

Mr. KITCHIN. I just wanted to know why you went on there at all, and if you went on, when you went on?

Mr. FULTON. He explained that this morning.

Mr. BOURNE. We tried to go on the boundary before, but the court and Government would not let us.

Mr. DICKSON. The next item is, "Loss of expense making first attempt at work which led to first injunction, cutting export logs, $150."

Mr. BOURNE. How many feet?

Mr. DICKSON. As near as I can remember there were from 25,000 to 30,000 feet of logs cut.

Mr. KITCHIN. Is that included in your list?

Mr. DICKSON. No, sir. These logs were cut at entirely different places, just where we could pick out an export tree.

Mr. FULTON. What was done with them?

Mr. DICKSON. There was nothing done with them. We got one log to the railroad when the injunction was served.

Mr. KITCHIN. What was the nature of the timber?

Mr. DICKSON. All poplar. We got one log to the railroad, and if it has not been split for firewood, it is there to-day.

Mr. KITCHIN. Was that timber a different class of timber from the other timber you cut?

Mr. DICKSON. Yes; in that it was higher grade timber on account of it being large export logs. These logs, you understand, were not to be sawed up but were to be shipped as logs. You see we had no mill at that time; we did not want to go to any great expense; we had gone to the expense of making some roads, and therefore we decided that we would take out a few thousand feet of poplar logs for export, and that is really what caused the Government to begin its suit; they did not stop us from building roads.

Mr. FULTON. Were these export logs that were cut just left lying there?

Mr. DICKSON. Just left lying there, yes, sir; and this item covers simply the expense incurred in the cutting of the logs and not the value of the logs themselves. The logs, a great many of them, were hewed octagon shape.

Mr. BOURNE. What was the value of these logs in their condition at this time?

Mr. DICKSON. Ten dollars per thousand feet, I should say.

Mr. FULTON. And you got nothing for them?

Mr. DICKSON. Nothing whatever. I think they were all lost.

The next item we have is entitled "J. N. Capps' loss, actual cash paid as damages, $1,491."

Mr. KITCHIN. Why should the Government be held responsible for that?

Mr. DICKSON. Because it is a direct damage. After the first injunction was dissolved we bought a $10,000 band mill in Cincinnati. We entered into a contract immediately, then, after the first injunction was dissolved, with a man by the name of J. N. Capps, in which he was to supply a 20,000 foot band mill, or rather we were to assist him in getting a band mill, and he was to cut these logs into lumber at $2.50 per thousand feet; that was the contract between us. Of course you well know that a band mill is not a movable mill, not a portable mill; it is a permanent mill.

Mr. BOURNE. Why did you get a band mill?

Mr. DICKSON. Because there is a saving of about 20 per cent.

Mr. BOURNE. And you expected to develop this property on a large scale?

Mr. DICKSON. Yes, we intended to develop this property on a large scale, and there is a saving of about 20 per cent between a band and a circular mill; and we bought this mill, or rather Mr. Capps bought this mill with our assistance, in Cincinnati. The Government begun its second injunction suit against us, after this mill had been prepared for shipment, and just when we were on the point of having it shipped to North Carolina. We were under contract to take the mill, and hence we had to go to Cincinnati, where the mill was all boxed ready for shipment. I think there was a thousand dollars paid on the mill. We had to go to Cincinnati and make a deal with those people by which we could get a small, portable mill, and this $1,491 item of damages consists of $1,000 paid to Capps by us, for loss of time under his contract with us and of $491 which we paid the Cincinnati people for boxing and holding the band mill and to release Capps and ourselves from the contract to take it. We had to agree to pay these sums, and we paid them, in order to get Capps to release us from his claim for damages against us, on account of the breach on our part of our sawing contract with him. This breach was due directly and solely to the action of the Government.

Mr. KITCHIN. How long did that band mill stay boxed up and hung up in Cincinnati, after it was boxed up ready for shipment?

Mr. DICKSON. Seven or eight months.

Mr. FULTON. Did you enter into a contract with the Cincinnati company for the purchase of this mill, or did Mr. Capps?

Mr. DICKSON. Mr. Capps.

Mr. KITCHIN. Mr. Capps entered into the contract?

Mr. DICKSON. Yes, but we were parties to the contract.

Mr. KITCHIN. Was the contract in writing?

Mr. DICKSON. It was a regular sawmill-machinery contract, such as the sawmill people issue. This is my recollection.

Mr. KITCHIN. Did your company sign the order?

Mr. DICKSON. No; we had no company at that time.

Mr. KITCHIN. You just had a verbal understanding between you and Mr. Capps?

Mr. DICKSON. Yes, sir.

Mr. KITCHIN. That you would buy a mill for him?

Mr. DICKSON. No, he was not able to carry it alone; that is, he was not able to put that mill in alone, and we had to assist him, and he was to pay us back for the mill.

Mr. KITCHIN. You were to pay for it yourselves, were you?

Mr. DICKSON. If he did not.

Mr. KITCHIN. How much was the purchase price of the mill?

Mr. DICKSON. The original price of the band mill, I think, was $10,000.

Mr. KITCHIN. And your agreement with Mr. Capps was that you were to advance the money for the mill or to stand good for him?

Mr. DICKSON. We were to stand good this way; we had to guarantee the payments for the mill.

Mr. KITCHIN. Was any cash paid?

Mr. DICKSON. Yes; I think it was $1,000.

Mr. KITCHIN. You had an agreement that he was to saw the lumber for you?

Mr. DICKSON. Yes, at $2.50 per thousand feet.

Mr. KITCHIN. You paid him $1,000 because you were compelled to cancel that contract?

Mr. DICKSON. Rather than have a lawsuit with Mr. Capps we compromised the matter; he, of course, was hung up by this injunction as well as we were.

Mr. BOURNE. Here is the original paper.

Mr. KITCHIN. Why not file that original as a part of your remarks?

Mr. DICKSON. I will file this contract of settlement between Mr. Capps and Mr. Mason and myself, marked "Exhibit B," as a part of my testimony.

Mr. FULTON. There was no contract in writing between you people and Capps?

Mr. DICKSON. Not at that time; no, sir.

Mr. FULTON. Was there any at any time?

Mr. BOURNE. For the sawing?

Mr. FULTON. Yes; in regard to his sawing lumber, which was the cause of your having to pay him this thousand dollars?

Mr. KITCHIN. Was that in writing?

Mr. FULTON. What I want to know is this: The question might come up, Did Capps have such a contract that could be enforced against these people? I am not satisfied with the evidence yet, that there is any evidence in here to justify you paying this man that thousand dollars. The fact that you did pay it is plain, but there is not anything here to show that you had to pay it.

Mr. BOURNE. Mr. Dickson, did you make a contract with Mr. J. N. Capps in regard to sawing this timber, or any part of it, after the dissolution of the first injunction? Just answer categorically, yes or no.

Mr. DICKSON. Yes.

Mr. BOURNE. What were the terms of the contract?

Mr. DICKSON. The terms of the contract were that he was to put in a band mill that would cut 25,000 feet of lumber per day, we guaranteeing to give him 25,000 feet of logs per day to cut; that we were to take the lumber from the tail of the mill and pay him $2.50 per thousand for converting the logs into the lumber and delivering it at the tail of the mill.

Mr. BOURNE. Do you know whether that contract was in writing or not?

Mr. DICKSON. I can not say positively, but I am under the impression that there is correspondence in the files that shows that, if not a contract drawn by an attorney, it was a contract in writing between us. I think it can be found in the files.

Mr. KITCHIN. Are the terms of that contract set out in this contract of settlement?

Mr. DICKSON. I think they are.

Mr. BOURNE. The substance of it.

Mr. DICKSON. I have not looked at it for ten years.

Mr. BOURNE. I will state that under the laws of North Carolina there is no requirement that such a contract as that mentioned by Mr. Dickson shall be in writing, and it is enforceable whether in writing or not if made for a valuable consideration.

Mr. DICKSON. You asked me a question, Mr. Kitchin, whether this settlement sets forth the contract. I see it does; it recites almost exactly what I have said to you.

Mr. BOURNE. Now, Mr. Dickson, was that the best possible settlement that you could get out of Mr. Capps?

Mr. DICKSON. Yes, sir.

Mr. BOURNE. How long were you negotiating with him for a settlement of this claim, if you recall?

Mr. DICKSON. Perhaps three months.

Mr. FULTON. Who finally did your sawing after you got to going?

Mr. DICKSON. Mr. Capps.

Mr. FULTON. Did he use the same mill?

Mr. DICKSON. He used the small mill, which was substituted for the band sawmill.

Mr. BOURNE. How long did he do your sawing?

Mr. DICKSON. Mr. Capps did it until he fell down, until he could not perform any longer. I have forgotten when he went out of there.

Mr. BOURNE. Then you employed other people?

Mr. DICKSON. Then we employed other people.

Mr. FULTON. How long was it from the time of this second injunction until you were able to start to work?

Mr. DICKSON. You mean from the filing of the second injunction?

Mr. FULTON. Yes.

Mr. DICKSON. Something over a year, as I remember it.

Mr. BOURNE. I do not think you understood Mr. Fulton. [To Mr. Fulton.] Do you mean when he was finally allowed to go ahead after confirmation of the contract by the Interior Department or when he was allowed just to saw out the small portion of timber that had been cut down?

Mr. FULTON. No; take the whole thing.

Mr. BOURNE. The injunction was dated the 8th day of March, 1895.

Mr. FULTON. I remember that.

Mr. BOURNE. They were permitted to go ahead on the 26th day of August, 1898.

Mr. FULTON. Between three and four years.

Mr. KITCHIN. That is, in full operation?

Mr. DICKSON. Yes, in full operation; we were given the property at that time.

Mr. FULTON. What was the $491 for, now?

Mr. DICKSON. That was a difference that had to be paid the people in Cincinnati as the cost of boxing and getting ready for shipment the band mill that had been bought and was, as I told you, boxed ready for shipment.

Mr. FULTON. And they charged you $491 for boxing it?

Mr. DICKSON. For boxing it and holding it the length of time they did, and to release us from the contract to take it.

Mr. FULTON. That is something you had to give them to get them to cancel the contract?

Mr. DICKSON. That is the actual cash we paid them for the cancellation of the contract. Otherwise they could have forced us to perform on this big band contract, which we were in no position to do.

Mr. KITCHIN. Did you ever afterwards put in the band mill?

Mr. DICKSON. No, sir.

Mr. FULTON. Did you make a direct guaranty to the Cincinnati people that you would pay this?

Mr. DICKSON. We did pay it.

Mr. FULTON. I mean pay the price of that band mill; was any contract existing between you and the Cincinnati people?

Mr. DICKSON. Only as guarantors.

Mr. FULTON. Did you make this guaranty to them, or did you make it to this man Capps?

Mr. DICKSON. We made it to them for this man Capps's benefit.

Mr. FULTON. Then, in other words, you paid Capps $491?

Mr. DICKSON. Exactly, just as it appears here; that it was $491 loss on the Capps transaction, and we had to pay it, because we had guaranteed the band-mill contract and, besides, we were liable to Capps on our contract with him.

Mr. FULTON. I just wanted to see whether there was any contract existing between you and the manufacturer; that is all.

Mr. DICKSON. The interest on the $1,491 is $178.81.

Mr. KITCHIN. How does that come in in the damages; for how long is that?

Mr. DICKSON. That is up to the date of the confirmation, until we got the property.

Mr. BOURNE. He was out the interest on that money he had paid out.

Mr. KITCHIN. That is your grounds for claiming it?

Mr. FULTON. In other words, if you had had that money all the time, up until you bought another mill, the use of that money would have been worth that much?

Mr. DICKSON. Six per cent interest, or $178.81.

Mr. BOURNE. You see, he did not have the use of any mill at all, and he absolutely lost the interest on his payment; he did not have the money or the use of the mill either.

Mr. DICKSON. The next is "Expense of H. M. D."—that is myself—"to Cincinnati to change mills, $50."

Mr. FULTON. That was on this same matter?

Mr. DICKSON. The same proposition, exactly.

Mr. BOURNE. How much is that interest?

Mr. DICKSON. Nine dollars and seventy-five cents interest.

Mr. FULTON. Nine dollars and seventy-five cents on the $50?

Mr. DICKSON. On the $50 for the length of time it stood.

"Attorney's fees, $1,500." Mr. Bourne can tell you more about that than I can.

Mr. BOURNE. All I can say is they were very reasonable.

Mr. KITCHIN. Have you actually paid out $1,500 for attorney's fees?

Mr. DICKSON. Yes, sir; a great deal more than that.

Mr. BOURNE. You see, this matter was in the United States circuit court. We had to travel from Statesville to Asheville and from Asheville to Greensboro, or anywhere the other side wanted to take it up. The United States attorney was going around to the courts of the district, and whenever he wanted to take it up at one point we had to go there, and that includes not one cent of the expenses of his attorney.

Mr. KITCHIN. So you say you have actually paid out $1,500 by virtue of these injunction suits of the Government for lawyers' fees?

Mr. DICKSON. More than that.

Mr. KITCHIN. Exclusive of expenses?

Mr. DICKSON. Yes, sir.

Mr. KITCHIN. Of course all of that will be a question with the committee, whether they will allow any of these.

Mr. BOURNE. It is all a matter of grace; we can not have a legal claim against the sovereign; there is no such thing, but the allowance of anything is a matter of grace on the part of the Government.

Mr. DICKSON. The last item on the list is "Loss on account of salaries paid, office rent, clerk hire, etc., from January 15, 1895, until date of confirmation, August, 1898, $7,500." I want to make an explanation there, Mr. Fulton. The actual salaries and expenses, office rent, and one man, whom we kept under contract in the office, hired by the year, would have and did amount to about $15,000 during those years; but we did not put in all of those expenses, for the reason that we attempted to do some business outside while we were hung up during this time. We would buy and sell lumber, and we made a portion of our expenses, though our capital was completely tied up, you understand, in this proposition. We could not do much business; we could not buy large stocks or handle large stocks, but we could buy from hand to mouth a few carloads of lumber here and there and sell them, and consequently we were able to make only about half the expenses for that period of time.

Mr. FULTON. How much did you have actually invested in cash from the time of the granting of the second injunction up till August, 1898? That is, what was the total sum that you had?

Mr. DICKSON. We had forty-six thousand and some odd dollars.

Mr. FULTON. And during that time did it earn you anything?

Mr. DICKSON. No, sir; it was tied up; we did not make a living. The facts are actually stated.

Mr. FULTON. At the time this second injunction was granted, in March, 1895, what was the extent of the arrangements that you had made for the purpose of cutting and sawing this timber; that is, what capacity, how much could you cut out, say, a day or a month, with the force that you had employed at that time?

Mr. DICKSON. Twenty-five thousand feet per day; that was our contract with this man Capps—to produce 25,000 feet.

Mr. FULTON. And you had the material and the machinery and everything installed there in March, 1895, so you could have produced it?

Mr. DICKSON. We did not have it all there; we had it on the way there.

Mr. FULTON. How much did you have there?

Mr. DICKSON. We had our engine and cars, rails, and our commissary goods, and the machinery ready to come forward from Cincinnati.

Mr. FULTON. You had not really commenced sawing?

Mr. DICKSON. No; though we had already logged on to the yard several thousand feet of logs. But in order to make this advantageous contract with Mr. Capps, for sawing at $2.50 per thousand and delivering the lumber at the tail of the mill, we had to make him a guarantee that we would give him 25,000 feet of logs per day, and I think this is all pertinent. I had gone—I say "I" because I went there before Mr. Mason did—and made contracts with four separate and distinct logging contractors, so that the four combined contracts, you understand, would supply us with our 25,000 feet of logs per day.

Mr. FULTON. What was the nature of the contracts you made with these logging companies?

Mr. DICKSON. We had cut the timber ourselves, you understand, or felled the trees ourselves, and cut the trees into logs. They furnished their own stock and supplies, and we paid them various prices, according to the distance that they had to haul the logs.

Mr. FULTON. They were the people who did the cutting?

Mr. DICKSON. No, sir.

Mr. FULTON. They never did any cutting?

Mr. DICKSON. No, sir.

Mr. FULTON. Did they ever hold you for any damages?

Mr. DICKSON. No, sir; because we held them off and gave them back their contracts, when we were released, to go ahead again. Those contracts ranged from $6 to $4.50 per thousand feet.

Mr. KITCHIN. To haul the logs to the sawmill?

Mr. DICKSON. Logs, yes; but no cutting.

Mr. KITCHIN. Had you gone to any expense in the way of building there?

Mr. DICKSON. Oh, yes. You will notice a charge of 148,000 feet; I went over that. We had gone to the expense of installing a small mill to saw the lumber for these buildings. It was a perfectly barren waste, and we had to put every building up for the men we employed, from the boarding house to the sawmill, and I might say we had these buildings nearly completed when this injunction was laid on us.

Mr. FULTON. What is the amount of your claim?

Mr. DICKSON. $27,873.55.

Mr. FULTON. What is the legal rate of interest in your State?

Mr. BOURNE. Six per cent; at that time the contract rate was 8 per cent. The legal rate was 6, but that was changed in 1895.

Mr. KITCHIN. I do not understand exactly about that $7,000 you had to pay there to servants and labor during that time.

Mr. BOURNE. That includes their own salaries.

Mr. FULTON. How much of that last item was for your salaries and how much was for salaries of other people; can you figure that out?

Mr. DICKSON. Yes; I can tell you very closely. There was $1,800 a year to each of us, Mr. Mason and myself, or $3,600 a year.

Mr. FULTON. That was for three years, was it not?

Mr. DICKSON. That was for about three and one-half years. The man we had employed by the year got $900 a year, our office rent was $150 a year, so that brought it up to $4,650 a year. There were three and one-half years, making $16,275. This contains no incidentals, such as telephone rent, and so forth. We simply claim in this item $7,500, while the actual expense per annum that we were under was $4,650 for Mr. Mason, myself, office rent, and one clerk.

Mr. KITCHIN. That includes, then, these items for the three and one-half years?

Mr. DICKSON. The whole sum total does; yes, sir.

Mr. KITCHIN. The sum total for three and one-half years would be how much?

Mr. DICKSON. Sixteen thousand two hundred and seventy-five dollars, and we have claimed for only $7,500, so it is less than half, and this allows Mr. Mason and me less than half salary.

Mr. KITCHIN. In fact, you cut your salaries about half in the claim as presented; why did you cut them in half? Were you doing anything else?

Mr. DICKSON. Just what I explained—that we were trying to do something outside during that time, and did do some little business.

Mr. KITCHIN. Did it take you half your time to do that outside work?

Mr. DICKSON. No; we were not employed half the time; in fact, we lay idle 90 per cent of the time; we were tied, hand and foot; we had no money to do anything with.

Mr. MASON. Let me call your attention to the fact that we were getting out this 2,000,000 feet of lumber at that time.

Mr. KITCHIN. Was it necessary for you to keep this $900 clerk there?

Mr. DICKSON. Yes, sir.

Mr. KITCHIN. Even if you did not have any other kind of business; why?

Mr. DICKSON. Because we had him hired by the year.

Mr. KITCHIN. Why was it necessary, if you were not doing anything else, to keep him two years?

Mr. DICKSON. Mr. Kitchin, we were expecting every minute to have this thing settled and to go ahead with our business. He was very capable and was a competent man in every respect, and a man we had drilled up to the point, and we thought that we could not replace him, and as an evidence that we could not replace him, we kept him up to within a year of our separation.

Mr. FULTON. Then you had him at $900 for three and one-half years?

Mr. DICKSON. Yes; we had him for three and one-half years; but we charged half of his salary to outside business.

Mr. FULTON. What other expenses were there to keep up during this time you were idle?

Mr. DICKSON. There was a large expense that is not charged up in our itemized statement. We kept this man Hyatt, whose affidavit is there, on pay, I think, at $40 a month.

Mr. FULTON. What were his duties?

Mr. DICKSON. We had to have somebody there to watch over our stuff. We had this lumber scattered, that was being cut; we had the mill and other buildings partially completed; and a mill sawing the damaged logs, all of which was looked after by him.

Mr. FULTON. Could not the clerk do that?

Mr. DICKSON. Mr. Fulton, this was 60 miles away from our office; our office was in Asheville and our plant was on Soco Creek, in Jackson County.

Mr. FULTON. Were there any other expenses?

Mr. DICKSON. As I say, we made no charge whatever for Mr. Hyatt's time.

Mr. FULTON. As I understand, this plant lay practically idle for three years and you got nothing out of it?

Mr. DICKSON. That is exactly it.

Mr. FULTON. In addition to this watchman and this clerk, tell what expense you were out in necessarily keeping up the plant during that time, if there are any.

Mr. DICKSON. Of course, there are always expenses in a case of that kind. There was a big item of expense for this man Hyatt. We had him employed constantly at $40 per month. After we were allowed to go in temporarily and saw up the logs and felled trees we made a settlement with Mr. Hyatt, and he did not charge us full time. I think he charged us on the basis of about $30 a month instead of $40. I know there was a little came back to us out of that.

Mr. BOURNE. You mentioned that you had a commissary and a stock of goods down there on this property. I would like to know if you made the purchase of these goods after the dissolution of the first injunction and before the service of the second?

Mr. DICKSON. I did.

Mr. BOURNE. How much did you have invested?

Mr. DICKSON. In round numbers, $3,500.

Mr. BOURNE. Were you able to dispose of that stock of goods there after the service of the second injunction?

Mr. DICKSON. We were not.

Mr. BOURNE. Why?

Mr. DICKSON. We did not have the men, sufficient men employed, to use it.

Mr. BOURNE. You did not have any men employed?

Mr. DICKSON. Only while we were cutting out this down timber.

Mr. BOURNE. What disposition did you make of that stock of goods?

Mr. DICKSON. We sold what we could of them.

Mr. BOURNE. How much loss did you suffer because of the fact that you could not sell them?

Mr. DICKSON. I do not know.

Mr. BOURNE. Can you approximate?

Mr. DICKSON. No, I do not think I can.

Mr. KITCHIN. What per cent on the dollar did you get for them when you did sell them?

Mr. DICKSON. They were not all there; we had sold what goods we could. We moved the goods out there just the same as though we were going to stay there forever. We sold what we could, and I remember one item of shoes particularly. We had a very big bill of shoes; I think it was $1,200. It was a big item, because that is a

rough country and they wear out shoes very fast and it was simply impossible for us to dispose of those in the short operation we had there, and we made a general clean-up of them when we got through and took them to Black Mountain and I sold the whole bunch for less than $100. I do not know whether it was 10 cents on the dollar or 5 cents on the dollar.

Mr. FULTON. What do you think that quantity of shoes, which you sold for less than $100, was worth, if there had been a market for them?

Mr. DICKSON. I think it would be a very conservative statement to say that we did not loose less than $1,500 on our stock of goods and commissary.

Mr. KITCHIN. Have you included that in your items?

Mr. DICKSON. No, sir.

Mr. FULTON. I think that is a good measure of damages.

Mr. DICKSON. That was certainly a loss. We did not include that in the statement at all.

Mr. KITCHIN. You might say that there were incidental damages that you did not put in.

Mr. DICKSON. Dozens of them.

Mr. BOURNE. This was really direct damage. These gentlemen made the itemized statement up as best they could from their papers and from their books, and they could not think of all the items.

Mr. KITCHIN. In your examination this morning you said that you made up that 1,500,000 or 2,000,000 feet from your log book; where is that log book?

Mr. DICKSON. I do not know whether it is in Asheville or not. It was a book about that long [indicating], a white book. I had it in my desk at Black Mountain, and saw it once there in my desk.

Mr. KITCHIN. Have you ever looked for the book to bring it here?

Mr. DICKSON. No, I have not.

Mr. BOURNE. By whom was that book kept?

Mr. DICKSON. By W. S. Hyatt.

Mr. BOURNE. Is he the gentleman who has submitted an affidavit here?

Mr. DICKSON. He is the man who submitted an affidavit.

Mr. BOURNE. And the affidavit relates to this very point?

Mr. DICKSON. Yes; and no one made a figure in that book but Mr. Hyatt. We simply took the book at the close of the month and footed it up for this purpose— not that we knew anything was coming, but for the reason that we were anticipating getting our timber cut at 50 cents a thousand feet, the cutting it down and putting it in logs. I do not mean moving it to the yard, but I mean the felling of the trees and putting the timber in logs was estimated at 50 cents a thousand feet, we were told if we could contract it; but the trouble in doing that was that the cutters would not cut to our advantage. You see, we had a long haul to the railroad and we wanted nothing but good logs and good timber; we could not afford to haul the poor stuff; and we figured that if we allowed our loggers to go in and cut it into logs and bring it in that they would bring in stuff that we did not want and lengths of logs we did not want; so we put this force of men in there to cut our own timber, which all practical lumbermen will tell you is a profitable thing to do, and we wanted to see that we were cutting it within the bounds of 50 cents a thousand feet. We kept

the log book to determine whether we were paying too much or too little, and it finally developed that we were paying too much. Having established this point as to cost of cutting logs the book was of no further use to us and we were not interested in preserving it.

Mr. BOURNE. I would like to do this: I would like to know if it would not be proper for me here to say that the claimants request the Committee on Claims, including the subcommittee, of course, if they find from the evidence or the testimony that has been submitted, that there are any elements of damages not covered in the itemized statement attached to the memorial, that they be considered, notwithstanding the fact that they are not included in said statement.

Mr. KITCHIN. Anything that is in the testimony would be included.

Mr. BOURNE. I would like to make that statement for the reason that you gentlemen can understand that nobody knows, in a claim of this sort, just exactly what the committee is going to take as the measure of damages, and it was impossible until these gentlemen got under cross-examination for them to recall every element of damage. You can understand how difficult that is. This statement was prepared in 1903, and that was five years after the confirmation of the contract by the Interior Department. We put Mr. Dickson on the stand because he had charge of this particular operation down there on Soco at that time.

STATEMENT OF MR. W. T. MASON.

Mr. KITCHIN. Mr. Mason, have you anything to state to the committee?

Mr. MASON. Mr. Dickson said that we had forty-six thousand and some odd dollars invested, but that $46,000 included the cost of the timber, leaving twenty-one thousand and something as money that had been actually put into the plant.

Mr. KITCHIN. In excess of the purchase price of the timber?

Mr. MASON. Yes. There is no interest computed on that at all, but the interest was computed on the value of the timber only.

Mr. BOURNE. Mr. Mason, did you hear Mr. Dickson testify in this matter?

Mr. MASON. Yes, sir.

Mr. BOURNE. Do you know whether his testimony was substantially true or not?

Mr. MASON. Yes, sir; it is.

Mr. BOURNE. Is there any correction that you desire to make to any part of it?

Mr. MASON. No, sir.

Mr. BOURNE. I will ask you if you did not verify this memorial and the items in the statements of damages attached to it?

Mr. MASON. Yes, sir.

(Thereupon, at 4 o'clock p. m., the subcommittee adjourned.)

(The contract between H. M. Dickson and W. T. Mason and J. N. Capps, and the memorial to the Congress are annexed hereto, marked, respectively, "Exhibit A" and "Exhibit B.")

EXHIBIT B.

ASHEVILLE, N. C., *June 10, 1897.*

This indenture witnesseth a full and final settlement between H. M. Dickson, W. T. Mason, and The Dickson-Mason Lumber Company, of Asheville, N. C., parties of the first part and J. N. Capps, of Effingham, Ill., party of the second part, as to all damages sustained by him in consequence of a certain injunction and suit in equity by the United States Government against said parties of the first part, in consequence of which default was made on a contract for sawing which the said party of the second part had made with parties of the first part; the closing up and abrogating of all agreements heretofore made by said parties of the first part with party of the second part; as to sawing lumber on the lands on the Catheart tract in Jackson County, N. C., being the lands to which the said The Dickson-Mason Lumber Company has the timber right; the amount due and unpaid the said The Dickson-Mason Lumber Company upon a contract to purchase a mill now owned by the said company and now located on above described land, by party of the second part, together with the method of payment of the balance due the said The Dickson-Mason Lumber Company from the said J. N. Capps; and further sets forth the contract as to sawing in the future, and all agreements connected therewith.

First. Whereas the parties of the first part entered into a contract with the said party of the second part to saw a certain amount of lumber on their lands in Jackson County, N. C., under certain conditions, and whereas on account of the above described injunction and the suit in equity they were prevented from carrying out the above contract, and whereas in consequence thereof said party of the second part was damaged, it is agreed and settled that the damages amount to fourteen hundred and ninety-one dollars ($1,491), being loss on machinery, loss of time and loss of interest on investment, and it is therefore agreed that this amount is to be credited to the said J. N. Capps as part payment upon the contract to purchase mill above described, and the said The Dickson-Mason Lumber Company is hereby released from all claims, of whatsoever nature, growing out of the above described default, and receipt is hereby acknowledged by the said J. N. Capps for the amount of the said credit, and it is hereby agreed that all agreements made or existing under the above described contract, for sawing, are null and void.

Second. Whereas in pursuance of the former operations, under the above described contract, the said The Dickson-Mason Lumber Company purchased a certain sawmill of the Smith, Meyer & Schnier pattern and brought it onto the above described lands, where it is now located, and whereas they made a contract with the said J. N. Capps to sell him this above described mill under the following conditions, to wit:

That the said J. N. Capps was to have possession of the mill for the purpose of sawing and was to saw for the said The Dickson-Mason Lumber Company and receive therefor two dollars and fifty cents ($2.50) per thousand feet measured lumber; one dollar and fifty cents ($1.50) in cash or its equivalent and one dollar to be retained by the said company in payment on said contract until such time as the one dollar ($1) per thousand retained shall amount to the purchase price of the mill, the purchase price being two thousand nine hundred and thirty-eight dollars and seven cents ($2,938.07), and whereas the above-described damage amounting to fourteen hundred and ninety-one dollars ($1,491) has been placed to Mr. Capps' credit, it leaves a balance of fourteen hundred and forty-seven dollars ($1,447.07), which is to be paid in sawing, by the retention of one dollar ($1) per thousand feet out of saw bill, until the sum is paid, when the title of the mill shall pass from the said The Dickson-Mason Lumber Company to the said J. N. Capps, and they shall make him a release for all claims on account of purchase money.

Third. And whereas it is desired by the parties to this paper that sawing shall continue, it is hereby agreed that it shall be done upon the following conditions, to wit:

(A) The said J. N. Capps is to saw and deliver, at the tail of the mill, all logs delivered by the said The Dickson-Mason Lumber Company into the mill yard, at the present site, (as convenient to the mill as practicable) at two dollars and fifty cents ($2.50) per thousand feet lumber measure; the lumber to be measured at the tail of the mill honestly and fairly, each party to bear one-half of the expense of said measuring. The above described payment of two dollars and fifty cents ($2.50) per thousand feet to be paid, one dollar and fifty cents ($1.50) in cash monthly and one dollar ($1) by the above described retention for the payment of the balance due on the present purchase price of the mill as above described.

(B) It is agreed that the lumber shall be sawed in such a way as the said The Dickson-Mason Lumber Company may direct, in an economical and workmanlike manner, to be trimmed and edged to get the highest grades practicable from the logs.

(C) All boards not suitable for merchantable lumber, made in straightening logs in sawing, and all short pieces from trimmer, and such pieces of the edgings as may be

cut off by the cut-off saw, which shall be of use to the said The Dickson-Mason Lumber Company, but which would otherwise go into the slab pile, shall be taken and taken care of by the said The Dickson-Mason Lumber Company without charge for sawing, the said J. N. Capps being at no expense for said care in any way whatever.

(D) It is agreed that no pay for sawing is to be made for missawed stock of merchantable lumber above 2 per cent thereof.

(E) A complete tally of lumber sawed shall be delivered to the said J. N. Capps at least once a week.

(F) The said J. N. Capps is to have the preference in sawing such yards of logs as the said The Dickson-Mason Lumber Company may elect to make at other places, than the present site, on the waters of Soco Creek, within the Cathcart tract of land in Jackson County, N. C., on the same conditions above stated; and in case the said J. N. Capps does not choose, or does not saw such yards when offered by the said The Dickson-Mason Lumber Company, he shall have the right of refusal, and the said The Dickson-Mason Lumber Company shall have the privilege of getting the yards sawed out by other parties.

In witness whereof we have hereunto set our hands and seals this day and date above written.

THE DICKSON-MASON LUMBER COMPANY. [SEAL.]
Per W. T. MASON, *Secretary and Treasurer.*
J. N. CAPPS. [SEAL.]

Witness:
P. V. SHOE.

STATE OF NORTH CAROLINA,
Buncombe County:

I, J. L. Cathy, clerk of the superior court, do hereby certify that the execution of the annexed instrument was this day proven before me, by the oath and examination of P. V. Shoe, the subscribing witness thereto.

Therefore let the same, with this certificate, be registered.

Witness my hand and official seal, this 3d day of December, A. D. 1897.

J. L. CATHY,
Clerk Superior Court.

NORTH CAROLINA,
Buncombe County:

Before me, Haywood Parker, a notary public in and for Buncombe County, N. C., came P. V. Shoe, the subscribing witness to the foregoing instrument, to me personally known, who, being by me first duly sworn, doth duly prove the execution thereof, for the purposes therein expressed.

In witness whereof I have hereunto signed my name and affixed my notarial seal this the 10th day of September, 1897.

[SEAL.] HAYWOOD PARKER,
Notary Public in and for Buncombe County, N. C.

NORTH CAROLINA,
Jackson County:

The foregoing certificate, Haywood Parker, notary public in and for the county of Buncombe and State of North Carolina, with his notarial seal attached, having been exhibited before me, is adjudged to be correct and sufficient. Therefore let the instrument with the certificates be registered.

Witness my hand and seal this September 11, 1897.

H. C. COWAN,
Clerk Superior Court, Jackson County, N. C.

The within instrument was this, the 11th day of September, 1897, duly registered in Book V, Record of Deeds for Jackson County, N. C., on pages 550 to 553, inclusive.

JOHN R. LONG,
Register of Deeds.

Registered December 3, 1897, at 3.35 o'clock p. m., in Book of Deeds No. 103, at pages 413 et seq., of Buncombe County Records.

W. J. BEACHBOARD,
Register of Deeds of Buncombe County, N. C.

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